

**AUDIT COMMITTEE
AUGUST 20, 2009**

| TAB | DESCRIPTION | ACTION |
|------------|---|-------------------|
| | UNIVERSITY of IDAHO REVISION TO FOUNDATION OPERATING AGREEMENT | Motion to approve |

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UNIVERSITY OF IDAHO

SUBJECT

Amended terms for Operating Agreement with University of Idaho Foundation

REFERENCE

October 9, 2008 Board consideration and approval of Foundation agreements for BSU, ISU and University of Idaho

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies & Procedures, Section V.E.

BACKGROUND/DISCUSSION

The University of Idaho and the University of Idaho Foundation have been implementing the State Board of Education Governing Policies and Procedures V.E (Gifts and Affiliated Foundations). The Foundation has worked extensively with its legal counsel as well as through communication and cooperation with the University's General Counsel. During this time, both parties have made several changes in the way business is conducted. Both parties have also continued to review the provisions of the Operating Agreement and have identified several revisions for consideration. The following is a summary and brief explanation of the proposed changes, divided into categories of substantive and non-substantive revisions.

I. Substantive Revisions

- a. Changes were made to more accurately reflect the Foundation's purposes and functions with regard to fundraising and management of funds. Related changes were also made to create consistency with the Foundation's Articles, Bylaws, and tax-exempt status. (*Changed provisions: third "WHEREAS" in recitals; Article I*)
- b. Changes were made to accurately reflect that the University, rather than the Foundation, is subject to Idaho State Board of Education (SBOE) rules and regulations and must obtain SBOE approval for certain actions. (*Changed provisions: fifth "WHEREAS" in recitals; Article II; Article IV.B.2; Article VI.D; Article VII.D*)
- c. Loaned Employees:
 1. The Foundation designated its Chairman, in addition to its Treasurer, as an individual with signature authority for the Foundation. The Foundation also specified that its Treasurer may delegate signature authority to other individuals consistent with its Bylaws, so long as no person with signature authority on behalf of the Foundation is an employee of the University,

AUDIT
AUGUST 20, 2009

- unless that employee is loaned to the Foundation. (*Changed provision: Article IV.D.1*)
2. The agreement acknowledges that the University may loan additional employees to the Foundation. (*Changed provision: Article III.A.1*)
 3. University employees loaned to the Foundation will have no function at the University other than to act in their capacity as employees loaned to the Foundation. (*Changed provision Article III.A.2.e.*)
 4. No University employee other than a loaned employee is permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees. (*Changed provision Article III.A.3.*)
- d. We removed reference to the 1975 Indenture agreement and continue discussions regarding accounting for the original CIT assets managed by the Foundation. This will allow for necessary flexibility in the event changes in accounting for these assets are necessary. (*Changed provision: Article IV.I*)
- e. Foundation legal counsel recommended revisions to various sections dealing with the Foundation's sharing of confidential information with the University. This recommendation was made for the purpose of (i) highlighting the separate nature of the Foundation and the University, (ii) protecting the Foundation's proprietary and confidential information—particularly donor and financial information; and (iii) clarifying that the Foundation is not a public agency and, accordingly, it may assert that its records are exempt from public records requests. (*Changed provisions: Article V.A, B, and F; Article VI.D*)
- f. Revisions were made so the terms upon which the Foundation would be dissolved would be consistent with its Articles, Bylaws, and information provided to the IRS. (*Changed provision: Article VIII.D*)

II. Non-Substantive Revisions

- a. The responsibilities of the University's designated Liaison were revised to more accurately reflect his or her responsibilities at the University. (*Changed provision: Article III.A.1.a and b*)
- b. The circumstances upon which the Executive Director will be hired or fired were revised to be consistent with the terms of the Loaned Employee Agreement (*Changed provision: Article III.A.2.d and e*)
- c. A number of other changes were made purely for clarity or stylistic purposes. These include, for example, renumbering, use of defined terms, and several instances of reworded phrases.

IMPACT

The University and the Foundation currently anticipate that a second University employee will be loaned to the Foundation and have authority, under the supervision of the Foundation Board, for financial transactions of the Foundation. This function will need to be transitioned out of the University's Trust and Investment Office. Administrative support for this position will continue to be supplied by University employees at this time.

The University and the Foundation will address the need to split cash management functions. The University is unique among state entities in that its constitutional status allows it to conduct cash management of its ongoing cash balances. The University realizes significant annual income from its cash management practices. Since the beginning of the Foundation, the University provided this service for the Foundation through the same individual. This function will also now be split between the University and the Foundation. There will need to be a transition period during which the University and the Foundation determine whether a loaned employee is the preferable mechanism or whether the Foundation should contract for cash management services as it does for other investment management services.

In addition to the functions of financial transactions and cash management, the parties anticipate that there may be other functions that may ultimately be transitioned from the University to the Foundation. This may involve the loaning of additional University employees to the Foundation at some time in the future.

The University does not anticipate a material financial impact on the University or the Foundation. The Foundation has always provided significant support payments for the University Trust and Investment Office employees who have served in operational capacities for the Foundation. While some portions of this support payment may need to be re-directed (such as back internally to the Foundation for a cash management function), the goal is to accomplish this transition and keep the Foundation's expenses for operation at approximately the same level.

In any event there will need to be a transition of functions currently being handled through the University's Trust and Investment Office. The University and the Foundation will accomplish this as expeditiously as is practical while maintaining the necessary operations of the Foundation and the University. We will continue to monitor the efficacy of the new operational structure and consider potential changes based on our experience. Any material changes will be presented to the Regents prior to implementation.

AUDIT
AUGUST 20, 2009

ATTACHMENTS

Attachment 1 – Operating Agreement text showing material changes from prior approved draft.

Page 5

Attachment 2 – Full Operating Agreement as amended with all attachments

Page 21

STAFF COMMENTS AND RECOMMENDATIONS

The operating agreement between the University of Idaho and the University of Idaho Foundation has been thoroughly reviewed by the Audit Committee.

Staff recommends approval.

BOARD ACTION

A motion to approve the request by the University of Idaho for revisions to its Operating Agreement with the University of Idaho Foundation, and to authorize the transition of operating functions from the University to the Foundation as described in the materials presented to the Board, such transition to be accomplished as expeditiously as is practical while maintaining the necessary operations of the Foundation and the University.

Moved by _____ Seconded by _____ Carried Yes _____ No _____

**OPERATING AGREEMENT
THE UNIVERSITY OF IDAHO AND
THE UNIVERSITY OF IDAHO FOUNDATION, INC.**

This agreement ("Operating Agreement") is entered into effective the ____ day of _____ 2009 by and between the University of Idaho ("University") and the University of Idaho Foundation, Inc. ("Foundation"). The University and the Foundation are sometimes collectively referred to herein separately as a "Party" and collectively as the "Parties."

WHEREAS, the Foundation is a nonprofit corporation incorporated on September 23, 1970, pursuant to the Idaho Nonprofit Corporation Act;

WHEREAS, the Foundation has been recognized as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code;

WHEREAS, the Foundation's mission ~~of~~ includes the Foundation is to secure, manage management and distributed distribution of private support to enhance the growth and development of the University;

WHEREAS, the Foundation and the University desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds;

WHEREAS, the Idaho State Board of Education (~~"and the Board of Regents of the University of Idaho (collectively the "State Board")~~ has have promulgated Policies and Procedures to be effective as of July of 2008 ("State Board's Policies and Procedures") which are attached hereto as Exhibit "A";

WHEREAS, Section V.E.2.c. of the State Board's Policies and Procedures requires the University to enter into a written operating agreement with the Foundation that sets forth their operating relationship; and

WHEREAS, the Foundation and the University intend for this agreement to be the written operating agreement required by Section V.E.2.c. of the State Board's Policies and Procedures.

NOW THEREFORE, in consideration of the mutual covenants and undertakings herein, the University and the Foundation hereby agree as follows:

ARTICLE I

FOUNDATION'S PURPOSES

The Foundation is the primary affiliated foundation responsible for assisting the University in soliciting, managing and distributing private support for the University. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation and By-

Laws, and the State Board's Policies and Procedures, the Foundation shall: (1) assist in the solicitation of, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property made for the benefit of the University from the general public (including individuals, corporations, other entities and other sources); (2) manage and invest the money and property it receives for the benefit of the University; and (3) support and assist the University in fundraising and donor relations.

In carrying out its purposes the Foundation shall not engage in activities that conflict with (1) federal or state laws, rules and regulations (including, but not limited to all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) applicable policies of the State Board; or (3) the role and mission of the University.

ARTICLE II

FOUNDATION'S ORGANIZATIONAL DOCUMENTS

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the University. All amendments of such documents shall also be provided to the University ~~and the Regents of the University of Idaho ("Regents")~~. Furthermore, the Foundation shall, to the extent practicable, provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws.

ARTICLE III

UNIVERSITY RESOURCES AND SERVICES

A. *University Employees.*

1. *Liaison:* The University's Vice President for University Advancement shall serve as the ~~University's~~ University's liaison to the Foundation-- (the "Liaison"). The duties and responsibilities of the Liaison are as follows:

a. The Liaison shall be responsible for ~~coordinating~~ communicating ~~with the University's and Foundation regarding the Foundation's~~ University's fundraising efforts and for ~~supervising and coordinating the~~ any administrative support provided by the University to the Foundation.

b. The Liaison or the Liaison's designee shall attend each meeting of the ~~Foundation's~~ Foundation's Board of Directors and shall report on behalf of the University to the ~~the~~ Foundation's Board of Directors regarding ~~the University's and Foundation's joint~~ fundraising efforts. The Liaison may also report other information to the Foundation's Board of Directors that is pertinent to the common goals of the University and the Foundation.

2. *Executive Director:* The Executive Director of the Foundation is an employee of the University who is loaned to the Foundation. All of the Executive Director's services shall be provided directly to the Foundation as follows:

a. The Executive Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the Executive Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in subparagraph c below. The Executive Director shall be subject to the control and direction of the Foundation.

b. The Executive Director shall be an employee of the University and entitled to University benefits to the same extent and on the same terms as other full-time University employees of the same classification as the Executive Director. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University's employment of the Executive Director including such expenses as salary, payroll taxes, and benefits.

c. The Foundation and the University shall enter into a written agreement, substantially in the form of Exhibit "B" hereto, establishing that the Executive Director is an employee of the University but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to the Executive Director.

d. In the event the Executive Director resigns, is terminated according to the terms of the Loaned Employee Agreement, or otherwise leaves the employ of the University, hiring of the subsequent Executive Director shall be done in accordance with Foundation procedures, University procedures (including University equal employment procedures), and applicable law (including laws applicable to the University). The Foundation shall have the ability to terminate the Loaned Employee Agreement upon notice to the University as further set forth in the Loaned Employee Agreement. The Foundation must provide the University with prior approval to hire any employee that the Foundation and University intend to be a loaned employee before the University employs such individual.

e. The University and the Foundation may elect to enter into additional agreements for the loaning of additional employees to the Foundation by the University pursuant to terms substantially similar to the Loaned Employee Agreement attached as Exhibit "B." The additional loaned employees shall report to either the Foundation Board or the Executive Director of the Foundation, in either case as determined by the Foundation Board and as specified in the additional loaned employee agreements. Such loaned employees shall have no function at the University other than to act in their capacity as employees loaned to the Foundation.

f. Termination of the Executive Director in accordance with the Loaned Employee Agreement shall constitute grounds for a termination proceeding by the University or for non-renewal of the Executive Director's contract with the University, if any.

3. *Limited Authority of University Employees.* Notwithstanding the foregoing provisions, no University employee ~~who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice President or equivalent position)~~ other than an employee loaned to the Foundation shall be permitted to

have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees.

B. *Support Staff Services.* The University shall provide administrative support in financial, accounting, investment and development services to the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "C" ("Service Agreement"). Except as specifically provided otherwise herein, all University employees who provide support services to the Foundation shall remain University employees under the direction and control of the University, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a Loaned Employee Agreement. The Foundation will pay directly to the University the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement or as otherwise determined by the agreement of the Parties.

C. *University Facilities and Equipment.* The University shall provide the use of the University's office space, equipment and associated services to the Foundation's employees upon the terms agreed to by the University and the Foundation. The terms of use (including amount of rent) of the University's office space, equipment and associated services shall be as set forth in the Service Agreement.

D. *No Foundation Payments to University Employees.* Notwithstanding any contrary provision of this Agreement to the contrary, the Foundation shall not make any payments directly to a University employee in connection with any resources or services provided to the Foundation pursuant to this Article.

ARTICLE IV

MANAGEMENT AND OPERATION OF FOUNDATION

A. *Gift Solicitation.*

1. *Form of Solicitation.* Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the University; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

2. *Foundation is Primary Donee.* Absent unique circumstances, prospective donors shall be requested to make gifts directly to the Foundation rather than to the University.

B. *Acceptance of Gifts.*

1. *Approval Required Before Acceptance of Certain Gifts.* Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the University, the Foundation shall obtain the prior written approval of the University. Similarly, the Foundation shall also obtain the University's prior written approval of the acceptance of any gift or grant that would impose a binding financial or contractual

obligation on the University. Prior to any approval by the University, the University shall obtain approval of the State Board where State Board policy requires such approval.

2. *Acceptance of Gifts of Real Property.* The Foundation shall conduct adequate due diligence on all gifts of real property that it receives. All gifts of real property that are intended to be held and used solely by the University donor to be developed for the University's use or to otherwise house facilities of any kind for the University's use shall be approved by the State Board before acceptance such gifts are accepted by either the University and/or the Foundation. The University shall be responsible for obtaining this approval by the State Board. In cases where the real property is intended to be used by the University in connection with carrying out its proper functions, the real property may be conveyed directly to the University, in which case the University and not the Foundation shall be responsible for the due diligence obligations for such property.

3. *Processing of Accepted Gifts.* All gifts received by the University or the Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated Gift Administration Office (a unit of the University's Trust and Investment Office) in accordance with the Service Agreement.

C. *Fund Transfers.* The Foundation agrees to transfer funds, both current gifts and income from endowments, to the University on a regular basis as agreed to by the Parties. The Foundation's Treasurer or other individual to whom such authority has been delegated by the Foundation's Board of Directors shall be responsible for transferring funds as authorized by the Foundation's Board of Directors. All transfers and expenditures noted in this Section must comply with Section 501(c)(3) of the Internal Revenue Code and be consistent with the Foundation's sole mission to support the University.

1. *Restricted Gift Transfers.* The Foundation may transfer restricted gifts to the University. Any such transferred restricted gifts will only be expended by the University pursuant to the terms of such restrictions. The Foundation shall inform the University officials into whose program or department restricted gifts are transferred of all restrictions on the use of such gifts and provide such officials with access to any relevant documentation concerning such restrictions. Such University officials shall account for such restricted gifts separate from other program and department funds in accordance with applicable University policies and shall notify the Foundation on a timely basis regarding the uses of such restricted gifts.

2. *Unrestricted Gift Transfers.* The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I of this Operating Agreement. The Foundation may make unrestricted donations to the University. Such donated funds will be expended under the oversight of the University President in compliance with state law and University policies. If the Foundation elects to use unrestricted gifts to make grants to the University, such grants shall be made at such times and in such amounts as the Foundation's Board of Directors may determine in such Board's sole discretion.

D. *Foundation Expenditures and Financial Transactions.*

1. *Signature Authority.* The Foundation designates the Foundation Chairman and Treasurer as the ~~individual~~ individuals with signature authority for the Foundation in all financial transactions. The Foundation's Treasurer may also delegate signature authority on a temporary basis consistent with the Foundation's Bylaws to another Foundation ~~may supplement~~ employee, an employee loaned to the Foundation, or ~~change this designation with written notice to the~~ a Foundation Board member who is not a University; ~~provided, however, in employee.~~ In no event may the person with Foundation signature authority for financial transactions be a University employee who functions in a key administrative or policy making capacity for the University (including, but not limited to, any University Vice President or equivalent position), unless such individual is an employee who is loaned to the Foundation.

2. *Expenditures.* All expenditures of the Foundation shall be (1) consistent with the purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

E. *University Report on Distributed Funds.* On a regular basis, which shall not be less than annually, the University shall report to the Foundation on the use of restricted and unrestricted funds transferred to the University. This report shall specify the restrictions on any restricted funds and the uses of such funds.

F. *Transfer of University Assets to the Foundation.* No University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:

1. A donor inadvertently directs a contribution to the University that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such gift shall be deposited in a University account and, except for transfers described in subsections 2 and 4 of this Section, State Board approval will be required prior to the University's transfer of such funds to the Foundation.

2. The University has gift funds that were originally transferred to the University from the Foundation and the University wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.

3. The University has raised scholarship funds through a University activity and the University wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship purposes for which the funds were raised.

4. The University transfers to the Foundation any gift received by the University from a donor that meets the following criteria: (i) the gift is less than \$10,000, and (ii) the gift will be invested by the Foundation for scholarship or other general University support purposes. This subsection, however, shall not apply to payments by the University to the Foundation for University obligations to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

G. *Separation of Funds.* All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using the Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts and shall be kept in a secured database that is protected by separate password-only access. For convenience, however, some Foundation expenses may be paid through the University such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis.

H. *Insurance.* To the extent that the Foundation is not covered by the State of Idaho Retained Risk Program, the Foundation shall maintain insurance to cover the operations and activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.

I. *Investment Policies.* All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the ~~Foundation's~~ Foundation's investment policy which is attached hereto as Exhibit "D"; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted gifts. The Foundation shall provide to the University any updates to such investment policy which updates shall also be attached hereto as Exhibit "D". ~~Further, the Parties expressly acknowledge the Indenture, attached hereto as Exhibit "E", between the University and Foundation, dated May 20, 1975, transferring the assets of certain funds, trusts and endowments from the University to the Foundation and further acknowledge such shall be invested pursuant to the terms of this paragraph of this Operating Agreement.~~

J. *Organization Structure of the Foundation.* The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation which are attached hereto as Exhibit "E" and the Foundation's By-Laws dated January 30, 2009, which are attached at Exhibit "F." The Foundation agrees to provide copies of such Articles and By-Laws as well as any subsequent amendments to such documents to the University. Any such amendments to the Articles and By-Laws shall be attached hereto as additions to Exhibit "E" and Exhibit "F", respectively.

K. *Conflicts of Interest.* The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is attached hereto as Exhibit "G."

ARTICLE V

FOUNDATION RELATIONSHIPS WITH THE UNIVERSITY

A. *Access to Records.* The University shall have reasonable access to the financial records of the Foundation upon permission granted by the Foundation from time to time, which shall not be unreasonably withheld. All access by the University of such records shall be made in accordance with applicable laws, Foundation policies, and guidelines. The scope of this right~~In addition, upon request of the University shall be construed as broadly as reasonably~~

needed to conduct a complete audit of the Foundation as such an audit would be conducted under generally accepted accounting procedures if Foundation, the University should so require. Provided, however, shall execute a proprietary and confidentiality agreement and instruct its agents and employees that the University need not conduct an audit to all confidential information of the Foundation shall be provided such access but shall be provide such access at any time protected from disclosure. Except as specifically authorized under this agreement, ~~the University's or the applicable proprietary and confidentiality agreement between the University and the Foundation,~~ the University's access shall not include donor specific data of the Foundation such that would provide individually identifiable information about donors or their donations made to the Foundation.

B. *Records Management.*

1. ~~The Parties recognize~~ The University acknowledges that in most cases the University is the primary recipient and depository of confidential donor information. The Parties recognize, however, that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the University shall be limited to the University's President and any designee of the University's President. ~~Notwithstanding the foregoing, the University acknowledges that in most cases the University is primary recipient and depository of confidential donor information.~~ The donor database and all other data, materials and information of the Foundation and the University pertaining to past, current or prospective donors, are proprietary to the Foundation and the University respectively and constitute confidential information and trade secrets. The Foundation and University shall take the steps necessary to monitor and control access to the donor database and to protect the security of computer servers and software relevant to the database, in each case to the extent that these systems are in their respective control.

2. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, By-Laws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, and all other Foundation records as required by applicable laws.

a. ~~Except to the extent that records are confidential (including confidential donor information), the Foundation agrees to be open to public inquiries for information that would normally be open in the conduct of University affairs and to provide such information in a manner consistent with the Idaho Public Records Law, set forth in Idaho Code Sections 9-337—9-350, except where otherwise required by state and federal law.~~

3. The Foundation's Board of Directors shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The parties

understand that the Foundation is not a public agency or a governing body as defined in the Idaho Code and the Idaho Open Meeting Law and Access to Public Records Statutes. Nothing in this Operating Agreement shall be construed as a waiver of the Foundation's right to assert exemption from these statutes.

C. *Name and Marks.* Each Party hereby is granted a general, non-exclusive, royalty-free license to use the corporate name of the other, specifically: "The University of Idaho" and "The University of Idaho Foundation" and "The University of Idaho Foundation, Inc." in all activities conducted in association with or for the benefit of the other. Use of the other Party's name must be in manner that clearly identifies the Parties as separate entities, and neither Party may use the other Party's name to imply approval or action of the other Party. Neither Party may delegate, assign, or sublicense the rights granted hereunder without express written consent from the other Party. This license does not extend to any identifying marks of either Party other than the specified corporate name. Use of other marks must receive prior written approval.

D. *Identification of Source.* The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.

E. *Establishing the Foundation's Annual Budget.* The Foundation shall provide the University with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board of Directors will vote to accept such operating budget. Any of the University's funding requests to the Foundation shall be communicated in writing by the President of the University to the Foundation's Treasurer by April 1 of each year.

F. *Attendance of the University's President at Foundation's Board of Director Meetings.* The Foundation may invite the University's President ~~shall be invited to attend all~~ meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.

G. *Supplemental Compensation of University Employees.* No University employee shall receive direct payments, compensation, or other benefits from the Foundation, provided that the Foundation may pay for those benefits which are necessary for its normal course of operation, including, but not limited to, travel and continuing professional education. Any such payment must be paid by the Foundation to the University and the University shall then pay or reimburse the employee in accordance with the University's normal practice. No University employee shall receive any payments or other benefits directly from the Foundation.

ARTICLE VI

AUDITS AND REPORTING REQUIREMENTS

- A. *Fiscal Year.* The Foundation and the University shall have the same fiscal year.
- B. *Annual Audit.* The Foundation shall have an annual financial audit conducted in accordance with Government Accounting Standards Board or Financial Accounting Standards Board principles as appropriate. The audit shall be conducted by an independent certified public

accountant who is not a director or officer of the Foundation. Such audit shall be conducted at the same or similar time as the University audit and shall be reported to the Foundation's Board of Directors. Such audit reports shall contain the Foundation's financial statements and the auditor's independent opinion regarding such financial statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.

C. *Separate Audit Rights.* The University agrees that the Foundation, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the University's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the University, at its own expense, may, at reasonable times, inspect and audit the Foundation's financial books and accounting records in accordance with Article V, A above.

D. *Annual Reports to University President.* ~~On a regular basis, which shall not be less than annually~~ Upon request, the Foundation shall provide a written report to the University President ~~and the Audit Committee of the State Board~~ setting forth the following items:

1. the annual financial audit report;
2. an annual report of Foundation transfers made to the University, summarized by University department;
3. an annual report of unrestricted funds received by the Foundation;
4. an annual report of unrestricted funds available for use during the current fiscal year;
5. a list of all of the Foundation's officers, directors, and employees;
6. a list of University employees for whom the Foundation made payments to the University for approved purpose during the fiscal year, and the amount and nature of each payment;
7. a list of all state and federal contracts and grants managed by the Foundation;
8. an annual report of the Foundation's major activities;
9. an annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the University; and

10. an annual report of any actual litigation involving the Foundation during its fiscal year, identification of legal counsel used by the Foundation for any purpose during such year, and identification of any potential or threatened litigation involving the Foundation limited to the extent necessary to protect attorney-client privilege and litigation strategy.

ARTICLE VII

CONFLICT OF INTEREST AND CODE OF ETHICS AND CONDUCT

A. *Conflicts of Interest Policy Statement.* The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is attached hereto as Exhibit "G."

B. *Dual Representation.* Under no circumstances may a University employee represent both the University and the Foundation in any negotiation, sign for both Parties in transactions, or direct any other University employee under their immediate supervision to sign for the related Party in a transaction between the University and the Foundation. This shall not, however, prohibit University employees from drafting transactional documents that are subsequently provided to the Foundation for the Foundation's independent review, approval and use.

C. *Contractual Obligation of University.* The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the University without first obtaining the prior written approval of the University. University approval of any such contract shall comply with policies of the State Board with respect to the State Board's approval of University contracts.

D. *Acquisition or Development of Real Estate.* The Foundation shall not acquire or develop real estate for the University's use or otherwise build facilities for the University's use ~~without~~ unless the University first obtains the approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification by the University to the State Board required pursuant to this paragraph ~~Section~~ may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

ARTICLE VIII

GENERAL TERMS

A. *Effective Date.* This Agreement shall be effective on the date set forth above.

B. *Right to Terminate.* This Operating Agreement shall terminate upon the mutual written agreement of both Parties. In addition, either Party may, upon 90 days prior written notice to the other, terminate this Operating Agreement, and either Party may terminate this Operating Agreement in the event the other Party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting Party specifying the nature of the default. Should the University choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require

the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner. The Parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event negotiations fail, the Parties will initiate the Dispute Resolution mechanism described below (through reference to the Foundation's Chairman and the State Board) to further attempt to negotiate a new agreement. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.

C. *Dispute Resolution.* The Parties agree that in the event of any dispute arising from this Operating Agreement, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the Parties. If the staff cannot resolve the dispute, then the dispute will be referred to the Foundation's Chairman and the University's President. If the Foundation's Chairman and University's President cannot resolve the dispute, then the dispute will be referred to the Foundation's Chairman and the State Board for resolution. If the dispute is not resolved by the aforementioned Parties, the University and the Foundation shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the Parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unresolved, then, in such case, either Party shall have the right to initiate litigation arising from this Operating Agreement. In the event of litigation, the prevailing Party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

D. *Dissolution of Foundation.* ~~Consistent with provisions appearing in the Foundation's bylaws and its articles~~ Upon dissolution of incorporation, should the Foundation cease to exist or cease to be an Internal Revenue Code §501(c)(3) organization, the Foundation, it shall transfer the balance of all property and assets of the Foundation for in a manner consistent with its Articles of Incorporation, which state that in the event of dissolution of the Foundation, "no member, director, officer, or individual shall be entitled to or receive any distribution or division of its remaining assets, property or proceeds, and the balance of all property and assets of the [Foundation] from any source, after the payment of all debts and obligations of the [Foundation], shall be vested, in the Board of Regents of the University of Idaho in trust, with the Regents for the use and benefit of the University. Any such assets not so disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose."

E. *Board Approval of Operating Agreement.* Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved by the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review

and approval no less frequently than once every two (2) years or more frequently if otherwise requested by the State Board.

F. *Modification.* Any modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties.

G. *Providing Document to and Obtaining Approval from the University.* Unless otherwise indicated herein, whenever documents are to be provided to the University or whenever the University's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the University's President or an individual to whom such authority has been properly delegated by the University's President.

H. *Providing Documents to and Obtaining Approval from the Foundation.* Unless otherwise indicated herein, whenever documents are to be provided to the Foundation or whenever the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.

I. *Notices.* Any notices required under this agreement may be mailed or delivered as follows:

To the University:

President of the University of Idaho
University of Idaho
P.O. Box 443151
Administration Building Room 105
Moscow, Idaho 83844-3151

To the Foundation:

Executive Director
University of Idaho Foundation, Inc.
714 W. State Street, Suite 240
Boise, Idaho 83702

J. *No Joint Venture.* At all times and for all purposes of this Operating Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party.

K. *Liability.* The University and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members or employees.

L. *Indemnification.* The University and the Foundation each agree to indemnify, defend and hold the other Party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the Party, its employees,

contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one Party who is working for the benefit of the other Party. Nothing in this Operating Agreement shall be construed to extend to the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code Sections 6-901 et seq.

M. *Assignment.* This Agreement is not assignable by either Party, in whole or in part.

N. *Governing Law.* This Agreement shall be governed by the laws of the State of Idaho.

O. *Articles, Sections, Subsections and Subparagraphs.* This Agreement consists of text divided into Articles that are identified by roman numeral (for example Article I), Sections that are identified by an uppercase letter followed by a period (for example A.), subsections that are identified by a number followed by a period (for example 1.) and subparagraphs that are identified by a lower case letter followed by a period (for example a.). The organization is hierarchical meaning that a reference to a division of the document includes all of its subsections (for example a reference to a Section includes the Section and all of its subsections and subparagraphs).

P. *Severability.* If any provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

Q. *Entire Agreement.* This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

IN WITNESS WHEREOF, the University and the Foundation have executed this agreement on the above specified date.

University of Idaho

By: _____
Its: President

University of Idaho Foundation, Inc.

By: _____
Its: Chairman

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**OPERATING AGREEMENT
THE UNIVERSITY OF IDAHO AND
THE UNIVERSITY OF IDAHO FOUNDATION, INC.**

This agreement ("Operating Agreement") is entered into effective the ____ day of _____ 2009 by and between the University of Idaho ("University") and the University of Idaho Foundation, Inc. ("Foundation"). The University and the Foundation are sometimes collectively referred to herein separately as a "Party" and collectively as the "Parties."

WHEREAS, the Foundation is a nonprofit corporation incorporated on September 23, 1970, pursuant to the Idaho Nonprofit Corporation Act;

WHEREAS, the Foundation has been recognized as a tax-exempt entity under Section 501(c)(3) of the Internal Revenue Code;

WHEREAS, the Foundation's mission includes the management and distribution of private support to enhance the growth and development of the University;

WHEREAS, the Foundation and the University desire to set forth in writing various aspects of their relationship with respect to matters such as the solicitation, receipt, management, transfer and expenditure of funds;

WHEREAS, the Idaho State Board of Education and the Board of Regents of the University of Idaho (collectively the "State Board") have promulgated Policies and Procedures to be effective as of July of 2008 ("State Board's Policies and Procedures") which are attached hereto as Exhibit "A";

WHEREAS, Section V.E.2.c. of the State Board's Policies and Procedures requires the University to enter into a written operating agreement with the Foundation that sets forth their operating relationship; and

WHEREAS, the Foundation and the University intend for this agreement to be the written operating agreement required by Section V.E.2.c. of the State Board's Policies and Procedures.

NOW THEREFORE, in consideration of the mutual covenants and undertakings herein, the University and the Foundation hereby agree as follows:

ARTICLE I

FOUNDATION'S PURPOSES

The Foundation is the primary affiliated foundation responsible for assisting the University in soliciting, managing and distributing private support for the University. Accordingly, to the extent consistent with the Foundation's Articles of Incorporation and By-Laws, and the State Board's Policies and Procedures, the Foundation shall: (1) assist in the solicitation of, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property made for the benefit of the University from the general public (including individuals, corporations, other entities and other sources); (2) manage and invest the money and property it receives for the benefit of the University; and (3) support and assist the University in fundraising and donor relations.

In carrying out its purposes the Foundation shall not engage in activities that conflict with (1) federal or state laws, rules and regulations (including, but not limited to all applicable provisions of the Internal Revenue Code and corresponding Federal Treasury Regulations); (2) applicable policies of the State Board; or (3) the role and mission of the University.

ARTICLE II

FOUNDATION'S ORGANIZATIONAL DOCUMENTS

The Foundation shall provide copies of its current Articles of Incorporation and Bylaws to the University. All amendments of such documents shall also be provided to the University. Furthermore, the Foundation shall, to the extent practicable, provide the University with an advance copy of any proposed amendments to the Foundation's Articles of Incorporation and Bylaws.

ARTICLE III

UNIVERSITY RESOURCES AND SERVICES

A. *University Employees.*

1. *Liaison:* The University's Vice President for University Advancement shall serve as the University's liaison to the Foundation (the "Liaison"). The duties and responsibilities of the Liaison are as follows:

a. The Liaison shall be responsible for communicating with the Foundation regarding the University's fundraising efforts and for coordinating any administrative support provided by the University to the Foundation.

b. The Liaison or the Liaison's designee shall attend each meeting of the Foundation's Board of Directors and shall report on behalf of the University to the Foundation's Board of Directors regarding the University's fundraising efforts. The Liaison may also report other information to the Foundation's Board of Directors that is pertinent to the common goals of the University and the Foundation.

2. *Executive Director:* The Executive Director of the Foundation is an employee of the University who is loaned to the Foundation. All of the Executive Director's services shall be provided directly to the Foundation as follows:

a. The Executive Director shall be responsible for the supervision and control of the day-to-day operations of the Foundation. More specific duties of the Executive Director may be set forth in a written job description prepared by the Foundation and attached to the Loaned Employee Agreement described in subparagraph c below. The Executive Director shall be subject to the control and direction of the Foundation.

b. The Executive Director shall be an employee of the University and entitled to University benefits to the same extent and on the same terms as other full-time University employees of the same classification as the Executive Director. The Foundation shall reimburse the University for all costs incurred by the University in connection with the University's employment of the Executive Director including such expenses as salary, payroll taxes, and benefits.

c. The Foundation and the University shall enter into a written agreement, substantially in the form of Exhibit "B" hereto, establishing that the Executive Director is an employee of the University but subject to the direction and control of the Foundation (generally a "Loaned Employee Agreement"). The Loaned Employee Agreement shall also set forth the relative rights and responsibilities of the Foundation and the University with respect to the Executive Director.

d. In the event the Executive Director resigns, is terminated according to the terms of the Loaned Employee Agreement, or otherwise leaves the employ of the University, hiring of the subsequent Executive Director shall be done in accordance with Foundation procedures, University procedures (including University equal employment procedures), and applicable law (including laws applicable to the University). The Foundation shall have the ability to terminate the Loaned Employee Agreement upon notice to the University as further set forth in the Loaned Employee Agreement. The Foundation must provide the University with prior approval to hire any employee that the Foundation and University intend to be a loaned employee before the University employs such individual.

e. The University and the Foundation may elect to enter into additional agreements for the loaning of additional employees to the Foundation by the University pursuant to terms substantially similar to the Loaned Employee Agreement attached as Exhibit "B." The additional loaned employees shall report to either the Foundation Board or

the Executive Director of the Foundation, in either case as determined by the Foundation Board and as specified in the additional loaned employee agreements. Such loaned employees shall have no function at the University other than to act in their capacity as employees loaned to the Foundation.

f. Termination of the Executive Director in accordance with the Loaned Employee Agreement shall constitute grounds for a termination proceeding by the University or for non-renewal of the Executive Director's contract with the University, if any.

3. *Limited Authority of University Employees.* Notwithstanding the foregoing provisions, no University employee other than an employee loaned to the Foundation shall be permitted to have responsibility or authority for Foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of Foundation employees.

B. *Support Staff Services.* The University shall provide administrative support in financial, accounting, investment and development services to the Foundation, as set forth in the Service Agreement attached hereto as Exhibit "C" ("Service Agreement"). Except as specifically provided otherwise herein, all University employees who provide support services to the Foundation shall remain University employees under the direction and control of the University, unless it is agreed that the direction and control of any such employee will be vested with the Foundation in a Loaned Employee Agreement. The Foundation will pay directly to the University the portion of the overhead costs associated with the services provided to the Foundation pursuant to the Service Agreement or as otherwise determined by the agreement of the Parties.

C. *University Facilities and Equipment.* The University shall provide the use of the University's office space, equipment and associated services to the Foundation's employees upon the terms agreed to by the University and the Foundation. The terms of use (including amount of rent) of the University's office space, equipment and associated services shall be as set forth in the Service Agreement.

D. *No Foundation Payments to University Employees.* Notwithstanding any contrary provision of this Agreement to the contrary, the Foundation shall not make any payments directly to a University employee in connection with any resources or services provided to the Foundation pursuant to this Article.

ARTICLE IV

MANAGEMENT AND OPERATION OF FOUNDATION

A. *Gift Solicitation.*

1. *Form of Solicitation.* Any and all Foundation gift solicitations shall make clear to prospective donors that (1) the Foundation is a separate legal and tax entity organized for

the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the University; and (2) responsibility for the governance of the Foundation, including the investment of gifts and endowments, resides in the Foundation's Board of Directors.

2. *Foundation is Primary Donee.* Absent unique circumstances, prospective donors shall be requested to make gifts directly to the Foundation rather than to the University.

B. *Acceptance of Gifts.*

1. *Approval Required Before Acceptance of Certain Gifts.* Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by the University, the Foundation shall obtain the prior written approval of the University. Similarly, the Foundation shall also obtain the University's prior written approval of the acceptance of any gift or grant that would impose a binding financial or contractual obligation on the University. Prior to any approval by the University, the University shall obtain approval of the State Board where State Board policy requires such approval.

2. *Acceptance of Gifts of Real Property.* The Foundation shall conduct due diligence on all gifts of real property that it receives. All gifts of real property that are intended solely by the donor to be developed for the University's use or to otherwise house facilities of any kind for the University's use shall be approved by the State Board before such gifts are accepted by either the University or the Foundation. The University shall be responsible for obtaining this approval by the State Board. In cases where the real property is intended to be used by the University in connection with carrying out its proper functions, the real property may be conveyed directly to the University, in which case the University and not the Foundation shall be responsible for the due diligence obligations for such property.

3. *Processing of Accepted Gifts.* All gifts received by the University or the Foundation shall be delivered (if cash) or reported (if any other type of property) to the Foundation's designated Gift Administration Office (a unit of the University's Trust and Investment Office) in accordance with the Service Agreement.

C. *Fund Transfers.* The Foundation agrees to transfer funds, both current gifts and income from endowments, to the University on a regular basis as agreed to by the Parties. The Foundation's Treasurer or other individual to whom such authority has been delegated by the Foundation's Board of Directors shall be responsible for transferring funds as authorized by the Foundation's Board of Directors. All transfers and expenditures noted in this Section must comply with Section 501(c)(3) of the Internal Revenue Code and be consistent with the Foundation's sole mission to support the University.

1. *Restricted Gift Transfers.* The Foundation may transfer restricted gifts to the University. Any such transferred restricted gifts will only be expended by the University pursuant to the terms of such restrictions. The Foundation shall inform the University officials into whose program or department restricted gifts are transferred of all restrictions on the use of

such gifts and provide such officials with access to any relevant documentation concerning such restrictions. Such University officials shall account for such restricted gifts separate from other program and department funds in accordance with applicable University policies and shall notify the Foundation on a timely basis regarding the uses of such restricted gifts.

2. *Unrestricted Gift Transfers.* The Foundation may utilize any unrestricted gifts it receives for any use consistent with the Foundation's purposes as generally summarized in Article I of this Operating Agreement. The Foundation may make unrestricted donations to the University. Such donated funds will be expended under the oversight of the University President in compliance with state law and University policies. If the Foundation elects to use unrestricted gifts to make grants to the University, such grants shall be made at such times and in such amounts as the Foundation's Board of Directors may determine in such Board's sole discretion.

D. *Foundation Expenditures and Financial Transactions.*

1. *Signature Authority.* The Foundation designates the Foundation Chairman and Treasurer as the individuals with signature authority for the Foundation in all financial transactions. The Foundation's Treasurer may also delegate signature authority on a temporary basis consistent with the Foundation's Bylaws to another Foundation employee, an employee loaned to the Foundation, or a Foundation Board member who is not a University employee. In no event may the person with Foundation signature authority for financial transactions be a University employee, unless such individual is an employee who is loaned to the Foundation.

2. *Expenditures.* All expenditures of the Foundation shall be (1) consistent with the purposes of the Foundation, and (2) not violate restrictions imposed by the donor or the Foundation as to the use or purpose of the specific funds.

E. *University Report on Distributed Funds.* On a regular basis, which shall not be less than annually, the University shall report to the Foundation on the use of restricted and unrestricted funds transferred to the University. This report shall specify the restrictions on any restricted funds and the uses of such funds.

F. *Transfer of University Assets to the Foundation.* No University funds, assets, or liabilities may be transferred directly or indirectly to the Foundation without the prior approval of the State Board except when:

1. A donor inadvertently directs a contribution to the University that is intended for the Foundation in which case such funds may be transferred to the Foundation so long as the documents associated with the gift indicate the Foundation was the intended recipient of the gift. In the absence of any such indication of donor intent, such gift shall be deposited in a University account and, except for transfers described in subsections 2 and 4 of this Section, State Board approval will be required prior to the University's transfer of such funds to the Foundation.

2. The University has gift funds that were originally transferred to the University from the Foundation and the University wishes to return a portion of those funds to the Foundation for reinvestment consistent with the original intent of the gift.

3. The University has raised scholarship funds through a University activity and the University wishes to deposit the funds with the Foundation for investment and distribution consistent with the scholarship purposes for which the funds were raised.

4. The University transfers to the Foundation any gift received by the University from a donor that meets the following criteria: (i) the gift is less than \$10,000, and (ii) the gift will be invested by the Foundation for scholarship or other general University support purposes. This subsection, however, shall not apply to payments by the University to the Foundation for University obligations to the Foundation, operating expenses of the Foundation or other costs of the Foundation.

G. *Separation of Funds.* All Foundation assets (including bank and investment accounts) shall be held in separate accounts in the name of the Foundation using the Foundation's Federal Employer Identification Number. The financial records of the Foundation shall be kept using a separate chart of accounts and shall be kept in a secured database that is protected by separate password-only access. For convenience, however, some Foundation expenses may be paid through the University such as payroll and campus charges. These expenses will be paid through accounts clearly titled as belonging to the Foundation and shall be reimbursed by the Foundation on a regular basis.

H. *Insurance.* To the extent that the Foundation is not covered by the State of Idaho Retained Risk Program, the Foundation shall maintain insurance to cover the operations and activities of its directors, officers and employees. The Foundation shall also maintain general liability coverage.

I. *Investment Policies.* All funds held by the Foundation, except those intended for short term expenditures, shall be invested in accordance with the Uniform Prudent Management of Institutional Funds Act, Idaho Code Sections 33-5001 to 33-5010, and the Foundation's investment policy which is attached hereto as Exhibit "D"; provided, however, the Foundation shall not invest any funds in a manner that would violate the applicable terms of any restricted gifts. The Foundation shall provide to the University any updates to such investment policy which updates shall also be attached hereto as Exhibit "D".

J. *Organization Structure of the Foundation.* The organizational structure of the Foundation is set forth in the Foundation's Articles of Incorporation which are attached hereto as Exhibit "E" and the Foundation's By-Laws dated January 30, 2009, which are attached at Exhibit "F." The Foundation agrees to provide copies of such Articles and By-Laws as well as any subsequent amendments to such documents to the University. Any such amendments to the Articles and By-Laws shall be attached hereto as additions to Exhibit "E" and Exhibit "F", respectively.

K. *Conflicts of Interest.* The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is attached hereto as Exhibit "G."

ARTICLE V

FOUNDATION RELATIONSHIPS WITH THE UNIVERSITY

A. *Access to Records.* The University shall have reasonable access to the financial records of the Foundation upon permission granted by the Foundation from time to time, which shall not be unreasonably withheld. All access by the University of such records shall be made in accordance with applicable laws, Foundation policies, and guidelines. In addition, upon request of the Foundation, the University shall execute a proprietary and confidentiality agreement and instruct its agents and employees that all confidential information of the Foundation shall be protected from disclosure. Except as specifically authorized under this agreement or the applicable proprietary and confidentiality agreement between the University and the Foundation, the University's access shall not include donor specific data of the Foundation such that would provide individually identifiable information about donors or their donations made to the Foundation.

B. *Records Management.*

1. The University acknowledges that in most cases the University is the primary recipient and depository of confidential donor information. The Parties recognize, however, that the records of the Foundation relating to actual or potential donors contain confidential information. Such records shall be kept by the Foundation in such a manner as to protect donor confidentiality to the fullest extent allowed by law. Notwithstanding the access to records permitted above, access to such confidential information by the University shall be limited to the University's President and any designee of the University's President. The donor database and all other data, materials and information of the Foundation and the University pertaining to past, current or prospective donors, are proprietary to the Foundation and the University respectively and constitute confidential information and trade secrets. The Foundation and University shall take the steps necessary to monitor and control access to the donor database and to protect the security of computer servers and software relevant to the database, in each case to the extent that these systems are in their respective control.

2. The Foundation shall be responsible for maintaining all permanent records of the Foundation including but not limited to the Foundation's Articles, By-Laws and other governing documents, all necessary documents for compliance with IRS regulations, all gift instruments, and all other Foundation records as required by applicable laws.

3. The Foundation's Board of Directors shall foster an atmosphere of openness in its operations, consistent with the prudent conduct of its business. The parties understand that the Foundation is not a public agency or a governing body as defined in the

Idaho Code and the Idaho Open Meeting Law and Access to Public Records Statutes. Nothing in this Operating Agreement shall be construed as a waiver of the Foundation's right to assert exemption from these statutes.

C. *Name and Marks.* Each Party hereby is granted a general, non-exclusive, royalty-free license to use the corporate name of the other, specifically: "The University of Idaho" and "The University of Idaho Foundation" and "The University of Idaho Foundation, Inc." in all activities conducted in association with or for the benefit of the other. Use of the other Party's name must be in manner that clearly identifies the Parties as separate entities, and neither Party may use the other Party's name to imply approval or action of the other Party. Neither Party may delegate, assign, or sublicense the rights granted hereunder without express written consent from the other Party. This license does not extend to any identifying marks of either Party other than the specified corporate name. Use of other marks must receive prior written approval.

D. *Identification of Source.* The Foundation shall be clearly identified as the source of any correspondence, activities and advertisements emanating from the Foundation.

E. *Establishing the Foundation's Annual Budget.* The Foundation shall provide the University with the Foundation's proposed annual operating budget and capital expenditure plan (if any) prior to the date the Foundation's Board of Directors meeting at which the Foundation's Board of Directors will vote to accept such operating budget. Any of the University's funding requests to the Foundation shall be communicated in writing by the President of the University to the Foundation's Treasurer by April 1 of each year.

F. *Attendance of the University's President at Foundation's Board of Director Meetings.* The Foundation may invite the University's President to attend meetings of the Foundation's Board of Directors and may act in an advisory capacity in such meetings.

G. *Supplemental Compensation of University Employees.* No University employee shall receive direct payments, compensation, or other benefits from the Foundation, provided that the Foundation may pay for those benefits which are necessary for its normal course of operation, including, but not limited to, travel and continuing professional education. Any such payment must be paid by the Foundation to the University and the University shall then pay or reimburse the employee in accordance with the University's normal practice. No University employee shall receive any payments or other benefits directly from the Foundation.

ARTICLE VI

AUDITS AND REPORTING REQUIREMENTS

A. *Fiscal Year.* The Foundation and the University shall have the same fiscal year.

B. *Annual Audit.* The Foundation shall have an annual financial audit conducted in accordance with Government Accounting Standards Board or Financial Accounting Standards

Board principles as appropriate. The audit shall be conducted by an independent certified public accountant who is not a director or officer of the Foundation. Such audit shall be conducted at the same or similar time as the University audit and shall be reported to the Foundation's Board of Directors. Such audit reports shall contain the Foundation's financial statements and the auditor's independent opinion regarding such financial statements. All such reports and any accompanying documentation shall protect donor privacy to the extent allowable by law.

C. *Separate Audit Rights.* The University agrees that the Foundation, at its own expense, may at any time during normal business hours conduct or request additional audits or reviews of the University's books and records pertinent to the expenditure of donated funds. The Foundation agrees that the University, at its own expense, may, at reasonable times, inspect and audit the Foundation's financial books and accounting records in accordance with Article V, A above.

D. *Annual Reports to University President.* Upon request, the Foundation shall provide a written report to the University President setting forth the following items:

1. the annual financial audit report;
2. an annual report of Foundation transfers made to the University, summarized by University department;
3. an annual report of unrestricted funds received by the Foundation;
4. an annual report of unrestricted funds available for use during the current fiscal year;
5. a list of all of the Foundation's officers, directors, and employees;
6. a list of University employees for whom the Foundation made payments to the University for approved purpose during the fiscal year, and the amount and nature of each payment;
7. a list of all state and federal contracts and grants managed by the Foundation;
8. an annual report of the Foundation's major activities;
9. an annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding Foundation fiscal year for the benefit of the University; and
10. an annual report of any actual litigation involving the Foundation during its fiscal year, identification of legal counsel used by the Foundation for any purpose during such

year, and identification of any potential or threatened litigation involving the Foundation limited to the extent necessary to protect attorney-client privilege and litigation strategy.

ARTICLE VII

CONFLICT OF INTEREST AND CODE OF ETHICS AND CONDUCT

A. *Conflicts of Interest Policy Statement.* The Foundation has adopted a written policy addressing the manner the Foundation will address conflict of interest situations. The Foundation's Conflict of Interest Policy is attached hereto as Exhibit "G."

B. *Dual Representation.* Under no circumstances may a University employee represent both the University and the Foundation in any negotiation, sign for both Parties in transactions, or direct any other University employee under their immediate supervision to sign for the related Party in a transaction between the University and the Foundation. This shall not, however, prohibit University employees from drafting transactional documents that are subsequently provided to the Foundation for the Foundation's independent review, approval and use.

C. *Contractual Obligation of University.* The Foundation shall not enter into any contract that would impose a financial or contractual obligation on the University without first obtaining the prior written approval of the University. University approval of any such contract shall comply with policies of the State Board with respect to the State Board's approval of University contracts.

D. *Acquisition or Development of Real Estate.* The Foundation shall not acquire or develop real estate for the University's use or otherwise build facilities for the University's use unless the University first obtains the approval of the State Board. In the event of a proposed purchase of real estate for such purposes by the Foundation, the University shall notify the State Board, at the earliest possible date, of such proposed purchase for such purposes. Furthermore, any such proposed purchase of real estate for the University's use shall be a coordinated effort of the University and the Foundation. Any notification by the University to the State Board required pursuant to this Section may be made through the State Board's chief executive officer in executive session pursuant to Idaho Code Section 67-2345(1)(c).

ARTICLE VIII

GENERAL TERMS

A. *Effective Date.* This Agreement shall be effective on the date set forth above.

B. *Right to Terminate.* This Operating Agreement shall terminate upon the mutual written agreement of both Parties. In addition, either Party may, upon 90 days prior written

notice to the other, terminate this Operating Agreement, and either Party may terminate this Operating Agreement in the event the other Party defaults in the performance of its obligations and fails to cure the default within 30 days after receiving written notice from the non-defaulting Party specifying the nature of the default. Should the University choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the Foundation that is not cured within the time frame set forth above, the Foundation may require the University to pay, within 180 days of written notice, all debt incurred by the Foundation on the University's behalf including, but not limited to, lease payments, advanced funds, and funds borrowed for specific initiatives. Should the Foundation choose to terminate this Operating Agreement by providing 90 days written notice or in the event of a default by the University that is not cured within the time frame set forth above, the University may require the Foundation to pay any debt it holds on behalf of the Foundation in like manner. The Parties agree that in the event this Operating Agreement shall terminate, they shall cooperate with one another in good faith to negotiate a new agreement within six (6) months. In the event negotiations fail, the Parties will initiate the Dispute Resolution mechanism described below (through reference to the Foundation's Chairman and the State Board) to further attempt to negotiate a new agreement. Termination of this Operating Agreement shall not constitute or cause dissolution of the Foundation.

C. *Dispute Resolution.* The Parties agree that in the event of any dispute arising from this Operating Agreement, they shall first attempt to resolve the dispute by working together with the appropriate staff members of each of the Parties. If the staff cannot resolve the dispute, then the dispute will be referred to the Foundation's Chairman and the University's President. If the Foundation's Chairman and University's President cannot resolve the dispute, then the dispute will be referred to the Foundation's Chairman and the State Board for resolution. If the dispute is not resolved by the aforementioned Parties, the University and the Foundation shall submit the dispute to mediation by an impartial third party or professional mediator mutually acceptable to the Parties. If and only if all the above mandatory steps are followed in sequence and the dispute remains unresolved, then, in such case, either Party shall have the right to initiate litigation arising from this Operating Agreement. In the event of litigation, the prevailing Party shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs, attorney fees, and other professional expenses.

D. *Dissolution of Foundation.* Upon dissolution of the Foundation, it shall transfer the balance of all property and assets of the Foundation in a manner consistent with its Articles of Incorporation, which state that in the event of dissolution of the Foundation, "no member, director, officer, or individual shall be entitled to or receive any distribution or division of its remaining assets, property or proceeds, and the balance of all property and assets of the [Foundation] from any source, after the payment of all debts and obligations of the [Foundation], shall be vested in the Board of Regents of the University of Idaho in trust for the use and benefit of the University. Any such assets not disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose."

E. *Board Approval of Operating Agreement.* Prior to the Parties' execution of this Operating Agreement, an unexecuted copy of this Operating Agreement must be approved by the State Board. Furthermore, this Operating Agreement, including any subsequent modifications and restatements of this Operating Agreement, shall be submitted to the State Board for review and approval no less frequently than once every two (2) years or more frequently if otherwise requested by the State Board.

F. *Modification.* Any modification to the Agreement or Exhibits hereto shall be in writing and signed by both Parties.

G. *Providing Document to and Obtaining Approval from the University.* Unless otherwise indicated herein, whenever documents are to be provided to the University or whenever the University's approval of any action is required, such documents shall be provided to, or such approval shall be obtained from, the University's President or an individual to whom such authority has been properly delegated by the University's President.

H. *Providing Documents to and Obtaining Approval from the Foundation.* Unless otherwise indicated herein, whenever documents are to be provided to the Foundation or whenever the Foundation's approval of any action is required, such document shall be provided to, or such approval shall be obtained from, the Foundation's Board of Directors or an individual to whom such authority has been properly delegated by the Foundation's Board of Directors.

I. *Notices.* Any notices required under this agreement may be mailed or delivered as follows:

To the University:

President of the University of Idaho
University of Idaho
P.O. Box 443151
Administration Building Room 105
Moscow, Idaho 83844-3151

To the Foundation:

Executive Director
University of Idaho Foundation, Inc.
714 W. State Street, Suite 240
Boise, Idaho 83702

J. *No Joint Venture.* At all times and for all purposes of this Operating Agreement, the University and the Foundation shall act in an independent capacity and not as an agent or representative of the other Party.

K. *Liability.* The University and Foundation are independent entities and neither shall be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members or employees.

L. *Indemnification.* The University and the Foundation each agree to indemnify, defend and hold the other Party, their officers, directors, agents and employees harmless from and against any and all losses, liabilities, and claims, including reasonable attorney's fees arising out of or resulting from the willful act, fault, omission, or negligence of the Party, its employees, contractors, or agents in performing its obligations under this Operating Agreement. This indemnification shall include, but not be limited to, any and all claims arising from an employee of one Party who is working for the benefit of the other Party. Nothing in this Operating Agreement shall be construed to extend to the University's liability beyond the limits of the Idaho Tort Claims Act, Idaho Code Sections 6-901 et seq.

M. *Assignment.* This Agreement is not assignable by either Party, in whole or in part.

N. *Governing Law.* This Agreement shall be governed by the laws of the State of Idaho.

O. *Articles, Sections, Subsections and Subparagraphs.* This Agreement consists of text divided into Articles that are identified by roman numeral (for example Article I), Sections that are identified by an uppercase letter followed by a period (for example A.), subsections that are identified by a number followed by a period (for example 1.) and subparagraphs that are identified by a lower case letter followed by a period (for example a.). The organization is hierarchical meaning that a reference to a division of the document includes all of its subsections (for example a reference to a Section includes the Section and all of its subsections and subparagraphs).

P. *Severability.* If any provision of this Agreement is held invalid or unenforceable to any extent, the remainder of this Agreement is not affected thereby and that provision shall be enforced to the greatest extent permitted by law.

Q. *Entire Agreement.* This Agreement constitutes the entire agreement among the Parties pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

IN WITNESS WHEREOF, the University and the Foundation have executed this agreement on the above specified date.

University of Idaho

By: _____
Its: President

University of Idaho Foundation, Inc.

By: _____
Its: Chairman

EXHIBIT "A"

State Board's Policies and Procedures effective July of 2008

Policies and Procedures

Section V Financial Affairs

Please NOTE: This policy does not go into effect until July 2008. To read the current policy visit this link: [V.E. \(prior 7/2008\)](#)

E. Gifts and Affiliated Foundations

1. Purpose of the Policy.
 - a. The Board recognizes the importance of voluntary private support and encourages grants and contributions for the benefit of the institutions, school, and agencies under its governance. Private support for public education is an accepted and firmly established practice throughout the United States. Tax-exempt foundations are one means of providing this valuable support to help the institutions, school, and agencies under the Board's governance raise money through private contributions. Foundations are separate, legal entities, tax-exempt under Section 501(c) of the United States Internal Revenue Code of 1986, as amended, associated with the institutions, school, and agencies under the Board's governance. Foundations are established for the purpose of raising, receiving, holding, and/or using funds from the private sector for charitable, scientific, cultural, educational, athletic, or related endeavors that support, enrich, and improve the institutions, school, or agencies. The Board wishes to encourage a broad base of support from many sources, particularly increased levels of voluntary support. To achieve this goal, the Board will cooperate in

Policies and Procedures

every way possible with the work and mission of recognized affiliated foundations.

b. The Board recognizes that foundations:

1. Provide an opportunity for private individuals and organizations to contribute to the institutions, school, and agencies under the Board's governance with the assurance that the benefits of their gifts supplement, not supplant, state appropriations to the institutions, school, and agencies;
2. Provide assurance to donors that their contributions will be received, distributed, and utilized as requested for specified purposes, to the extent legally permissible, and that donor records will be kept confidential to the extent requested by the donor and as allowed by law;
3. Provide an instrument through which alumni and community leaders can help strengthen the institutions, school, and agencies through participation in the solicitation, management, and distribution of private gifts; and
4. Aid and assist the Board in attaining its approved educational, research, public service, student loan and financial assistance, alumni relations, and financial development program objectives.

Policies and Procedures

- c. The Board, aware of the value of tax-exempt foundations to the well being of the institutions, school, and agencies under the Board's governance, adopts this policy with the following objectives:
 - 1. To preserve and encourage the operation of recognized foundations associated with the institutions, school, and agencies under the Board's governance; and
 - 2. To ensure that the institutions, school, and agencies under the Board's governance work with their respective affiliated foundations to make certain that business is conducted responsibly and according to applicable laws, rules, regulations, and policies, and that such foundations fulfill their obligations to contributors, to those who benefit from their programs, and to the general public.
- 2. Institutional Foundations.

The foregoing provisions are designed to promote and strengthen the operations of foundations that have been, and may be, established for the benefit of the public colleges and universities in Idaho. The intent of this policy is to describe general principles that will govern institutional relationships with their affiliated foundations. It is intended that a more detailed and specific description of the particular relationship between an

Policies and Procedures

institution and its affiliated foundation will be developed and committed to a written operating agreement, which must be approved by the Board.

Technology transfer organizations, including the Idaho Research Foundation, are not subject to this policy.

a. Board Recognition of Affiliated Foundations.

1. The Board may recognize an entity as an affiliated foundation if it meets and maintains the requirements of this policy. The chief executive officer of each institution must ensure that any affiliated foundation recognized by the Board ascribes to these policies. The Board acknowledges that it cannot and should not have direct control over affiliated foundations. These foundations must be governed separately to protect their private, independent status. However, because the Board is responsible for ensuring the integrity and reputation of the institutions and their campuses and programs, the Board must be assured that any affiliated foundation adheres to sound business practices and ethical standards appropriate to such organizations in order to assure the public that the foundation is conducting its mission with honesty and integrity.
2. Upon the effective date of this policy, the institution chief executive officer shall provide a list of current affiliated foundations and an implementation plan to bring each

Policies and Procedures

foundation before the Board to be formally recognized as a nonprofit corporation or affiliated foundation to benefit a public college or university in Idaho, for one or more of the purposes previously described in this policy. Each foundation shall be brought into substantial conformance with these policies and, upon so doing, the institution shall provide prompt notice to the Board in order that the Board may recognize the affiliated foundation. Upon recognition by the Board, the organization of the nonprofit corporation or foundation is ratified, validated, and confirmed, and it shall be deemed to have been organized as if its organization had taken place under authority of this policy. Likewise, any new foundations established subsequent to implementation of this policy must be brought to the Board for formal recognition before such foundation begins operations.

- b. General Provisions Applicable to all Affiliated Foundations recognized by the Board.
 - 1. All private support of an institution not provided directly to such institution shall be through a recognized affiliated foundation. While an institution may accept gifts made directly to the institution or directly to the Board, absent unique circumstances making a direct gift to the institution more appropriate, donors shall be requested to make gifts to affiliated foundations.

Policies and Procedures

2. Each affiliated foundation shall operate as an Idaho nonprofit corporation that is legally separate from the institution and is recognized as a 501(c)(3) public charity by the Internal Revenue Service. The management and control of a foundation shall rest with its governing board. All correspondence, solicitations, activities, and advertisements concerning a particular foundation shall be clearly discernible as from that foundation, and not the institution.
3. The institutions and foundations are independent entities and neither will be liable for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, members, or staff.
4. It is the responsibility of the foundation to support the institution at all times in a cooperative, ethical, and collaborative manner; to engage in activities in support of the institution; and, where appropriate, to assist in securing resources, to administer assets and property in accordance with donor intent, and to manage its assets and resources.
5. Foundation funds shall be kept separate from institution funds. No institutional funds, assets, or liabilities may be transferred directly or indirectly to a foundation without the prior approval of the Board except as provided herein. Funds may be

Policies and Procedures

transferred from an institution to a foundation without prior Board approval when:

- a. A donor inadvertently directs a contribution to an institution that is intended for the foundation. If an affiliated foundation is the intended recipient of funds made payable to the Board or to an institution, then such funds may be deposited with or transferred to the affiliated foundation, provided that accompanying documents demonstrate that the foundation is the intended recipient. Otherwise, the funds shall be deposited in an institutional account, and Board approval will be required prior to transfer to an affiliated foundation; or
 - b. The institution has gift funds that were transferred from and originated in an affiliated foundation, and the institution wishes to return a portion of funds to the foundation for reinvestment consistent with the original intent of the gift.
6. Transactions between an institution and an affiliated foundation shall meet the normal tests for ordinary business transactions, including proper documentation and approvals. Special attention shall be given to avoiding direct or indirect conflicts of interest between the institution and the affiliated foundation and those

Policies and Procedures

with whom the foundation does business. Under no circumstances shall an institution employee represent both the institution and foundation in any negotiation, sign for both the institution and foundation in a particular transaction, or direct any other institution employee under their immediate supervision to sign for the related party in a transaction between the institution and the foundation.

7. Prior to the start of each fiscal year, an affiliated foundation must provide the institution chief executive officer with the foundation's proposed annual budget, as approved by the foundation's governing board.
8. Each foundation shall conduct its fiscal operations to conform to the institution's fiscal year. Each foundation shall prepare its annual financial statements in accordance with Government Accounting Standards Board (GASB) or Financial Accounting Standards Board (FASB) principles, as appropriate.
9. Institution chief executive officers shall be invited to attend all meetings of an affiliated foundation's governing board in an advisory role. On a case by case basis, other institution employees may also serve as advisors to an affiliated foundation's governing board, as described in the written foundation operating agreement approved by the Board.

Policies and Procedures

10. The foundation, while protecting personal and private information related to private individuals, is encouraged, to the extent possible or reasonable, to be open to public inquiries related to revenue, expenditure policies, investment performance and/or other information that would normally be open in the conduct of institution affairs.
11. A foundation's enabling documents (e.g., articles of incorporation and bylaws) and any amendments are to be provided to the institution. These documents must include a clause requiring that in the event of the dissolution of a foundation, its assets and records will be distributed to its affiliated institution, provided the affiliated institution is a qualified charitable organization under relevant state and federal income tax laws. To the extent practicable, the foundation shall provide the institution with an advance copy of any proposed amendments, additions, or deletions to its articles of incorporation or bylaws. The institution shall be responsible for providing all of the foregoing documents to the Board.
12. Foundations may not engage in activities that conflict with federal or state laws, rules and regulations; the policies of the Board; or the role and mission of the institutions. Foundations shall comply with applicable Internal Revenue Code provisions

Policies and Procedures

and regulations and all other applicable policies and guidelines.

13. Fund-raising campaigns and solicitations of major gifts for the benefit of an institution by its affiliated foundation shall be developed cooperatively between the institution and its affiliated foundation. Before accepting contributions or grants for restricted or designated purposes that may require administration or direct expenditure by an institution, a foundation will obtain the prior approval of the institution chief executive officer or a designee.
14. Foundations shall obtain prior approval in writing from the institution chief executive officer or a designee if gifts, grants, or contracts include a financial or contractual obligation binding upon the institution.
15. Foundations shall make clear to prospective donors that:
 - a. The foundation is a separate legal and tax entity organized for the purpose of encouraging voluntary, private gifts, trusts, and bequests for the benefit of the institution; and
 - b. Responsibility for the governance of the foundation, including investment of gifts and endowments, resides in

Policies and Procedures

the foundation's governing board.

16. Institutions shall ensure that foundation-controlled resources are not used to acquire or develop real estate or to build facilities for the institution's use without prior Board approval. The institution shall notify the Board, at the earliest possible date, of any proposed purchase of real estate for such purposes, and in such event should ensure that the foundation coordinates its efforts with those of the institution. Such notification to the Board may be through the institution's chief executive officer in executive session pursuant to Idaho Code 67-2345 (1) (c).

c. Foundation Operating Agreements.

Each institution shall enter into a written operating agreement with each recognized foundation that is affiliated with the institution. Operating agreements must be signed by the chairman or president of the foundation's governing board, and by the institution chief executive officer. The operating agreement must be approved by the Board prior to execution and must be re-submitted to the Board every two (2) years, or as otherwise requested by the Board, for review and re-approval. Foundation operating agreements shall establish the operating relationship between the parties, and shall, at a minimum, address the following topics:

Policies and Procedures

1. Institution Resources and Services.

- a. Whether, and how, an institution intends to provide contract administrative and/or support staff services to an affiliated foundation. When it is determined that best practices call for an institution employee to serve in a capacity that serves both the institution and an affiliated foundation, then the operating agreement must clearly define the authority and responsibilities of this position within the foundation. Notwithstanding, no employee of an institution who functions in a key administrative or policy making capacity (including, but not limited to, any institution vice-president or equivalent position) shall be permitted to have responsibility or authority for foundation policy making, financial oversight, spending authority, investment decisions, or the supervision of foundation employees. The responsibility of this position within the foundation that is performed by an institution employee in a key administrative or policy making capacity shall be limited to the coordination of institution and affiliated foundation fundraising efforts, and the provision of administrative support to foundation fundraising activities.

Policies and Procedures

- b. Whether, and how, an institution intends to provide other resources and services to an affiliated foundation, which are permitted to include:
 - i. Access to the institution's financial systems to receive, disburse, and account for funds held (with respect to transactions processed through the institution's financial system, the foundation shall comply with the institution's financial and administrative policies and procedures manuals);
 - ii. Accounting services, to include cash disbursements and receipts, accounts receivable and payable, bank reconciliation, reporting and analysis, auditing, payroll, and budgeting;
 - iii. Investment, management, insurance, benefits administration, and similar services; and
 - iv. Development services, encompassing research, information systems, donor records, communications, and special events.
- c. Whether the foundation will be permitted to use any of the institution's facilities and/or equipment, and if so,

Policies and Procedures

the details of such arrangements.

- d. Whether the institution intends to recover its costs incurred for personnel, use of facilities or equipment, or other services provided to the foundation. If so, then payments for such costs shall be made directly to the institution. No payments shall be made directly from a foundation to institution employees in connection with resources or services provided to a foundation pursuant to this policy.

2. and Operation of Foundations.

- a. Guidelines for receiving, depositing, disbursing and accounting for all funds, assets, or liabilities of a foundation, including any disbursements/transfers of funds to an institution from an affiliated foundation. Institution officials into whose department or program foundation funds are transferred shall be informed by the foundation of the restrictions, if any, on such funds and shall be responsible both to account for them in accordance with institution policies and procedures, and to notify the foundation on a timely basis regarding the use of such funds.

Policies and Procedures

- b. Procedures with respect to foundation expenditures and financial transactions, which must ensure that no person with signature authority shall be an institution employee in a key administrative or policy making capacity (including, but not limited to, an institution vice-president or equivalent position).
- c. Liability insurance coverage the foundation will have in effect to cover its operations and the activities of its directors, officers, and employees.
- d. Description of the investment policies to be utilized by the foundation, which shall be conducted in accordance with prudent, sound practice to ensure that gift assets are protected and enhanced, and that a reasonable return is achieved, with due regard for the fiduciary responsibilities of the foundation's governing board. Moreover, such investments must be consistent with the terms of the gift instrument.
- e. Procedures that will be utilized to ensure that institution and foundation funds are kept separate.
- f. Detailed description of the organization structure of the

Policies and Procedures

foundation, which addresses conflict of interest in management of funds and any foundation data.

3. Foundation Relationships with the Institutions.

- a. The institution's ability to access foundation books and records.
- b. The process by which the institution chief executive officer, or designee, shall interact with the foundation's board regarding the proposed annual operating budget and capital expenditure plan prior to approval by the foundation's governing board.
- c. Whether, and how, supplemental compensation from the foundation may be made to institutional employees. Any such payments must have prior Board approval, and shall be paid by the foundations to the institutions, which in turn will make payments to the employee in accordance with normal practice. Employees shall not receive any payments or other benefits directly from the foundations.

4. Audits and Reporting Requirements.

Policies and Procedures

- a. The procedure foundations will utilize for ensuring that regular audits are conducted and reported to the Board. Unless provided for otherwise in the written operating agreement, such audits must be conducted by an independent certified public accountant, who is not a director or officer of the foundation. The independent audit shall be a full scope audit, performed in accordance with generally accepted auditing standards.
- b. The procedure foundations will use for reporting to the institution chief executive officer the following items:
 - i. Regular financial audit report;
 - ii. Annual report of transfers made to the institution, summarized by department;
 - iii. Annual report of unrestricted funds received, and of unrestricted funds available for use in that fiscal year;
 - iv. A list of foundation officers, directors, and employees;

Policies and Procedures

- v. A list of institution employees for whom the foundation made payments to the institution for supplemental compensation or any other approved purpose during the fiscal year, and the amount and nature of that payment;
 - vi. A list of all state and federal contracts and grants managed by the foundation; and
 - vii. annual report of the foundation's major activities;
 - viii. An annual report of each real estate purchase or material capital lease, investment, or financing arrangement entered into during the preceding foundation fiscal year for the benefit of the institution; and
 - ix. An annual report of any actual litigation involving the foundation during its fiscal year, as well as legal counsel used by the foundation for any purpose during such year. This report should also discuss any potential or threatened litigation involving the foundation.
5. Conflict of Interest and Code of Ethics and Conduct.

Policies and Procedures

A description of the foundation's conflict of interest policy approved by the foundation's governing board and applicable to all foundation directors, officers, and staff members, and which shall also include a code of ethics and conduct. Such policy must assure that transactions involving the foundation and the personal or business affairs of a trustee, director, officer, or staff member should be approved in advance by the foundation's governing board. In addition, such policy must provide that directors, officers, and staff members of a foundation disqualify themselves from making, participating, or influencing a decision in which they have or would have a financial interest. Finally, such policy must assure that no director, trustee, officer, or staff member of a foundation shall accept from any source any material gift or gratuity in excess of fifty dollars (\$50.00) that is offered, or reasonably appears to be offered, because of the position held with the foundation; nor should an offer of a prohibited gift or gratuity be extended by such an individual on a similar basis.

3. Foundations for Other Agencies and Idaho School for the Deaf and the Blind (ISDB).

Other agencies and ISDB under the Board's jurisdiction may establish foundations to accept gifts made for the benefit of the agencies' or school's

Policies and Procedures

operating purposes. These agencies and school are subject to the same policies as the institutional foundations. However, agency/school foundations with annual revenues less than \$100,000 are not required to obtain an independent audit. These agencies/school must instead submit an annual report to the Board of gifts received and the disposition of such gifts.

4. Idaho Educational Public Broadcasting System Foundations and Friends Groups.

Foundations and Friends groups that exist for the benefit of the Idaho Educational Public Broadcasting System (IEPBS) are required by Federal Communications Commission (FCC) regulations to have specific spending authority designated by the Board. Audits of the IEPBS Foundation and Friends groups will be conducted by the State Legislative Auditor.

- a. By action of the Board, the Idaho Educational Public Broadcasting System Foundation, Inc., has been designated to accept gifts made for the benefit of public television in the state of Idaho. The Foundation will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.
- b. By action of the Board, the Friends of Channel 4, Inc., has been designated to accept gifts made for the Benefit of KAID TV, Channel 4. The Friends of Channel 4, Inc., will conduct its activities in a manner

Policies and Procedures

consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.

- c. By action of the Board, the Friends of Channel 10, Inc., has been designated to accept gifts made for the benefit of KISU TV, Channel 10. The Friends of Channel 10, Inc., will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.
 - d. By action of the Board, the Friends of KUID, Inc., has been designated to accept gifts made for the benefit of KUID TV, Channel 12. The Friends of Channel 12, Inc., will conduct its activities in a manner consistent with the Federal Communications Commission (FCC) regulations and the FCC license held by the Board.
5. Acceptance of Direct Gifts.

Notwithstanding the Board's desire to encourage the solicitation and acceptance of gifts through affiliated foundations, the Board may accept donations of gifts, legacies, and devises (hereinafter "gifts") of real and personal property on behalf of the state of Idaho that are made directly to the Board or to an institution, school, or agency under its governance. Gifts worth more than \$250,000 must be reported to and approved by the executive director of the Board before such gift may be expended or otherwise used by the institution, school, or agency. Gifts worth more than

Policies and Procedures

\$500,000 must be approved by the Board. The chief executive officer of any institution, school, or agency is authorized to receive, on behalf of the Board, gifts that do not require prior approval by the executive director or the Board and that are of a routine nature. This provision does not apply to transfers of gifts to an institution, school, or agency from an affiliated foundation (such transfers shall be in accordance with the written operating agreement between the institution, school, or agency and an affiliated foundation, as described more fully herein).

Additional Resources

[User Guide \(.pdf\)](#)

[Role & Mission](#)

[Strategic Plan](#)

[Tracking Table](#)

[Guidance Memorandums](#)

[Mandatory Student Health Insurance](#)

Some of the documents here are available in Adobe Acrobat Reader format. A copy

[Policies/Procedures](#)[Section I](#)[Section II](#)[Section III](#)[Section IV](#)[Section V](#)[Section VI](#)

Policies and Procedures

of Adobe's Acrobat Reader or plug-in for your browsers is required to read these documents. One can be obtained free of charge by visiting the following website:
<http://www.adobe.com/products/acrobat/readstep2.html>

[Bylaws](#)

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Deputy Director

208-332-1567

EXHIBIT "B"

Loaned Employee Agreement

SUB-COMMITTEE DISCUSSION DRAFT

**AGREEMENT FOR LOANED EMPLOYEE
UNIVERSITY OF IDAHO/UNIVERSITY OF IDAHO FOUNDATION, INC.**

THIS AGREEMENT is entered into by and between the UNIVERSITY OF IDAHO, a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho ("University"), and THE UNIVERSITY OF IDAHO FOUNDATION, INC. a nonprofit corporation ("UIF") and is effective the _____ day of _____, 2008.

BACKGROUND

A. UIF has asked University to make certain staff members available to fulfill various staffing requirements for UIF's day-to-day operations.

B. University has agreed to loan its employee, *****("Loaned Employee"), to UIF to act in the capacity of ***** for UIF pursuant to the terms of this Agreement.

AGREEMENT

The parties agree as follows:

1. Relationship between Loaned Employee and University.

a. Status. At all times under this Agreement, Loaned Employee shall be an exempt, fiscal year employee of the University subject to all applicable policies and procedures of the Regents and the University. UIF shall have control over all aspects of Loaned Employee's day to day work, and Loaned Employee shall devote 100% of his or her working time to performing services for UIF. Only University may terminate the employment of Loaned Employee. Notwithstanding the foregoing, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. The parties acknowledge that University and Loaned Employee have agreed and acknowledged that Loaned Employee's contract with the University is contingent upon continuation of this Agreement and in the event this agreement is terminated Loaned Employee's contract with the University will also terminate. Loaned Employee will be considered a loaned employee under the worker's compensation law of the State of Idaho.

SUB-COMMITTEE DISCUSSION DRAFT

b. Compensation. University shall pay Loaned Employee a fiscal year salary rate of \$****, payable on the regular bi-weekly paydays of the University, and subject to adjustment in accordance with the University's regular policies and procedures. Loaned Employee will be entitled to University benefits to the same extent and on the same terms as other full-time University employees of her/his classification. UIF shall pay University for this cost as provided in Section 3 below.

c. Travel Expenses. University shall reimburse directly to Loaned Employee costs incurred for UIF travel that is approved in advance by the UIF or the University. UIF shall pay University for this cost as provided in Section 3 below.

d. No Prohibition on Leasing Employee to UIF. University represents and warrants to UIF that there is no agreement with Loaned Employee nor any University policy or procedure (including, without limitation, any agreement, policy, or rule of the Idaho State Board of Education, the Regents or the University) that prohibits the University from leasing Loaned Employee to UIF pursuant to the terms of this Agreement. University further represents and warrants that Loaned Employee is eligible for benefits as a full-time leased employee under the term of all applicable University benefit plans. University shall indemnify, defend, and hold UIF harmless from any breach of the foregoing representations.

2. Relationship between UIF and Loaned Employee.

a. Supervision. Loaned Employee will work full time under the supervision and direction of the UIF Board of Directors. Loaned Employee will report directly to UIF President or her/his designee, who shall determine her/his duties to perform work for UIF.

b. Performance Evaluations. UIF will evaluate the performance of Loaned Employee on an annual basis at a time consistent with the annual reviews of exempt employees at the University. UIF will provide University with a copy of any written documentation regarding the evaluation within fourteen (14) days after the evaluation is complete.

3. Relationship between UIF and University.

a. Lease of Loaned Employee. During the term of this Agreement, so long as Loaned Employee is employed by University, University shall make available to UIF the full time services of Loaned Employee, subject to University's continued employment of Loaned Employee. The furnishing of Loaned Employee shall not be considered a professional service of the University to UIF, nor shall University be considered a contractor of UIF.

b. University to Provide Salary and Benefits. As indicated above, University

SUB-COMMITTEE DISCUSSION DRAFT

shall provide Loaned Employee with a fiscal year salary rate of \$**** and other University benefits to the same extent and on the same terms as other full-time University employees of her/his classification. University shall be responsible for all facets of payroll and benefits administration with respect to Loaned Employee, including, without limitation, withholding and payment of payroll taxes, unemployment compensation, worker's compensation coverage, social security, and providing any fringe and welfare benefit programs for Loaned Employee. University shall indemnify, defend, and hold UIF harmless for the payment of all items set forth in this Section 3(b) and any claims or losses resulting from the administration of any employee benefits pursuant to any applicable law, including without limitation the Fair Labor Standards Act, the Employee Retirement Income Security Act, and the Internal Revenue Code.

c. Reimbursement of Salary and Benefits by UIF. UIF will reimburse University for one hundred percent (100%) of the University's total cost of Loaned Employee's salary and benefits and any reimbursable costs such as travel expenses. Such costs will be billed annually and paid to the University in one annual installment. University shall maintain accurate books and account records reflecting the actual cost of all items of direct cost for which payment is sought under this Agreement. At all reasonable times, UIF shall have the right to inspect and copy said books and records, which the University agrees to retain for a minimum period of five (5) years following the termination of this Agreement.

d. Review of Loaned Employee's Status/Discipline/Termination for Cause. Loaned Employee shall at all times remain an employee of University. Accordingly, University shall have the power to evaluate, discipline, and terminate Loaned Employee in its discretion and in accordance with any of its policies, procedures, or agreements between University and Employee. As provided above, UIF will conduct an annual review of Loaned Employee. UIF will provide a copy of any documents related to its evaluation to the University no later than fourteen (14) days after the evaluation is completed. Based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance, UIF may discipline the Loaned Employee for cause, which may include taking action up to and including termination of this Agreement, such discipline and determination of cause to be in accordance with UIF policies and procedures and applicable law. If UIF makes such a determination, UIF shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason UIF is discontinuing the services of Loaned Employee.

e. Indemnification by UIF for Acts of Loaned Employee. University shall have no liability to UIF for loss or damage directly resulting from the fault, negligence, misconduct, or other acts of the Loaned Employee while Loaned Employee is performing

SUB-COMMITTEE DISCUSSION DRAFT

activities on behalf of or at the direction of UIF. UIF therefore agrees to release, defend, indemnify and hold harmless the state of Idaho, University, its governing board, officers, employees, and agents, from and against any and all claims, demands, losses, damages, costs, expenses, and liabilities, for injuries (including death) to persons and for damages to property (including damage to property of UIF or others) arising out of or in connection with the activities of the Loaned Employee performed on behalf of or at the direction of UIF. Notwithstanding the foregoing, both parties may maintain any liability insurance coverage as it shall deem appropriate with respect to liabilities arising out of the acts or omissions of Loaned Employee.

f. Compliance With Employment Discrimination Laws.

- 1) UIF agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee as if Loaned Employee were an employee of UIF. UIF shall notify University within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. UIF shall indemnify, defend, and hold University harmless from any claims or losses resulting from UIF's failure to comply with any applicable employment discrimination laws.
- 2) University agrees to comply with all laws regarding employment discrimination, including, without limitation, the Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil Rights Act, the Equal Pay Act, and the Idaho Human Rights Act with respect to Loaned Employee. University shall notify UIF within five (5) days of any claim by Loaned Employee alleging a violation of any laws relating to employment discrimination. University shall indemnify, defend, and hold UIF harmless from any claims or losses resulting from University's failure to comply with any applicable employment discrimination laws.

4. General Terms

a. Term, Termination. The term that University shall lease Loaned Employee to UIF shall extend to *****, which is the term of employment specified in Loaned Employee's contract as an exempt employee of the University, unless it is terminated earlier upon the occurrence of any of the following:

SUB-COMMITTEE DISCUSSION DRAFT

- 1) Notice to University Due to Loaned Employee Performance Problems. Pursuant to Section 3(d) above, UIF may discipline Loaned Employee by taking action up to and including termination of this Agreement for cause based on its annual review of Loaned Employee's performance or any interim review or concerns regarding Loaned Employee's performance. If UIF makes such a determination, UIF shall provide notice to the University that it will no longer lease the services of Loaned Employee effective as of the date specified in the notice with a reasonable amount of detail as to the reason UIF is discontinuing the services of Loaned Employee.
- 2) Termination in the Event of Default. Either party may terminate the lease of Loaned Employee by University to UIF upon the material default of the other's performance provided that the non-defaulting party first provides the other with at least ten (10) day's notice of the default and an opportunity to cure such default within the notice period.
- 3) Discontinued Employment of Loaned Employee by University. The lease of Loaned Employee to UIF shall automatically terminate if Loaned Employee is no longer an employee of University for any reason.

The parties may extend the term of this Agreement at any time upon mutual agreement for a new term that is equal to the term of the Loaned Employee's renewed contract with the University. The UIF is under no obligation to extend the term of this Agreement for a new term, however, (in order to be consistent with University policies which call for at least 60 days notice if the University will not renew the Loaned Employee's employment agreement) in the event the UIF determines that it will not agree to an extension of the term of this Agreement the UIF will give University notice of its intention not to extend the term of this agreement at least 60 days prior to the expiration of the term of this Agreement. Failure to give the notice required hereunder shall NOT effect a renewal of the term of this agreement, rather it will only extend the term of this agreement long enough for 60 days notice to be given.

b. No Third Party Beneficiaries. The parties acknowledge that there are no intended third party beneficiaries of this Agreement. Without limiting the foregoing, this Agreement shall not be construed as a promise of continuing employment to Loaned Employee, who remains subject to all applicable Regents and University policies, including but not limited to policies regarding nonrenewal of fixed term appointments and termination or discipline.

SUB-COMMITTEE DISCUSSION DRAFT

c. Governing Law. This Agreement will be governed by the laws of the State of Idaho as an agreement to be performed within the State of Idaho. The venue for any legal action under this Agreement shall be in Latah County.

d. Notice. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail) or certified mail with return receipt requested or by facsimile. All notices shall be addressed to the parties at the following addresses or at such other addresses as the parties may from time to time direct in writing:

To UIF:

University of Idaho Foundation, Inc.
Chairman
714 W. State Street, Suite 240
Boise, ID 83702

Phone: (208) 364-4065
Fax: (208) 364-4037

To the University:

University of Idaho
Vice President for Advancement
1106 Blake Avenue
Moscow, ID 83844-3150

Phone: (208) 885-6155
Fax: (208) 885-4999

Notice shall be deemed given on its date of mailing, faxing, or upon written acknowledgment of its receipt by personal delivery, whichever shall be earlier.

e. Waiver. Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent breach of the same or any other term, covenant or condition herein contained.

f. Attorney's Fees. In the event an action is brought to enforce any of the terms, covenants or conditions of this Agreement, or in the event this Agreement is placed with an attorney for collection or enforcement, the successful party to such an action or collection shall be entitled to recover from the losing party a reasonable attorney's fee, together with such other costs as may be authorized by law.

g. Assignment. Neither party shall assign this Agreement without the prior written consent of the other.

SUB-COMMITTEE DISCUSSION DRAFT

h. Amendments. This Agreement may not be modified or amended except by an agreement in writing signed by both of the parties.

i. Acknowledgment by Employee. This Agreement shall not be effective until it is executed by University and UIF and acknowledged by Loaned Employee pursuant to the signature blocks below.

Signature page follows.

SUB-COMMITTEE DISCUSSION DRAFT

The parties have executed this Agreement effective as of the date set forth above.

UNIVERSITY OF IDAHO
FOUNDATION,

UNIVERSITY OF IDAHO
INC.

Lloyd Mues, Vice President
Finance and Administration

_____, Chairman

Christopher Murray, Vice President
University Advancement

_____, _____

Acknowledgment by Loaned Employee:

Loaned Employee, by his or her signature below, acknowledges the terms of this Agreement between University and UIF and agrees that he or she is an employee of the University that is loaned to UIF pursuant to the terms of this Agreement. Loaned Employee further acknowledges that he or she is a 'loaned employee' pursuant to all state workman's compensation laws. Accordingly, Loaned Employee acknowledges and agrees that in the event of any work-related injury that is covered by workman's compensation insurance held for the benefit of Loaned Employee by University, Loaned Employee will be precluded from recovering damages from UIF for such injury in accordance with applicable state workman's compensation laws.

Name: _____

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EXHIBIT "C"

Service Agreement

DISCUSSION DRAFT - SERVICES AGREEMENT
UNIVERSITY OF IDAHO – UNIVERSITY OF IDAHO FOUNDATION

THIS SERVICES AGREEMENT is entered into by and between the REGENTS OF THE UNIVERSITY OF IDAHO, a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho (“University”), and THE UNIVERSITY OF IDAHO FOUNDATION, a private nonprofit corporation (“UIF”).

The University agrees to provide to the UIF the following administrative, financial, accounting, and investment support services.

1. Administrative support for UIF investment management function including support for UIF relationship with investment managers, brokerage accounts, securities custodial firms, brokerage firms, other financial institutions, and investment advisors, preparation of reports on investment detail, monitoring activities of investment managers, and accounting for investment transactions.
2. Administrative support for UIF endowment/trust and gift management functions (including Consolidated Investment Trust – CIT) including analysis of endowment/trust and gift agreements to assist UIF in considering approval, maintenance of UIF endowment files, accounting and database management for UIF endowments/trusts, preparation of reports of UIF endowment/trust activities, earnings and status, preparation of endowment/trust earnings estimates for UIF report to UI Financial Aid, support for UIF investment committee, preparation of cash management earnings estimates for the UIF finance committee.
3. Administrative support for management of UIF charitable remainder trusts and gift annuities, including calculation of charitable gift amounts and payment schedules, support for federal tax reporting, calculations of payments to trust income beneficiaries, and preparation of reports for trust donors.
4. Administrative Support for UIF general accounting, including cash receipt and disbursement processing, preparation of financial statement and work papers for external audit, support for UIF Audit Committee and Finance Committee, support for UIF tax return filing (separate from tax reporting for individual trusts in which UIF is the Trustee), support for UIF management of real property and other non-cash assets.
5. Administrative support for UIF gift accounting, including establishing UIF gift accounts, preparation of gift revenue reports and reconciliation between UIF and UI, assist with transfers of gift funds to UI, assist with monitoring gift fund use to ensure compliance with wishes of donor, UIF policies and applicable laws.
6. Administrative support for UIF gift acceptance committee including analysis for evaluation of proposed gifts of real estate and analysis of gifts with unusual restrictions and/or financial/legal consequences, assist with transfers of gifted marketable securities and approved real estate to UIF, assist with receipt of distributions from estates and trusts to UIF.
7. Administrative support for UIF gift receipting and acknowledgment including depositing cash, checks and credit card payments into UIF accounts, receipt,

verification and valuation of marketable securities gifted to UIF, issuing contribution receipts and acknowledgements to UIF donors, assist with training UI personnel in gift transmittal policies and procedures.

All University employees who provide support services to the UIF shall remain University employees under the direction and control of the University.

The University will supply the facilities, equipment, software and operating supplies necessary for the University employees supplying the above support services to the UIF, the nature and location of which shall be in the University's discretion. In addition, the University shall furnish office space and office equipment for use by the UIF's Managing Director the nature and location of which shall be subject to agreement of the parties.

The UIF will pay directly to the University a reasonable consideration for the the services, facilities, equipment, software and operating supplies provided to the UIF pursuant to the Service Agreement based upon agreed upon budgets for the services and operations described herein. In conjunction with the University's annual budget process, the University will prepare and present to the UIF for consideration and acceptance an operating budget for the services and operations to be provided under this Agreement upon which the consideration shall be based.

This Services Agreement shall be effective as of the date of the last signature thereto and shall continue in annual terms matched to the University's fiscal year until terminated by either party. This Services Agreement may be terminated by either party upon written notice of termination, such termination to be effective ____ days after notice thereof. This Services Agreement shall also terminate at the same time as any termination of the Memorandum of Understanding between the University and the UIF dated _____. In the event of termination, all obligations of the parties hereto shall cease as of the date of termination except for obligations for payment or reimbursement which accrued prior to the date of termination.

UNIVERSITY OF IDAHO

UNIVERSITY OF IDAHO FOUNDATION

Lloyd Mues, Vice President
Finance and Administration

William G. Gilbert, Jr, Chairman

Date:_____

Date:_____

EXHIBIT "D"

Investment Policy

University of Idaho Foundation, Inc.

POOLED ENDOWMENT FUNDS Statement of Investment Policy and Management

Presented by the
Investment Committee

and

Adopted by the
University of Idaho Foundation, Inc.
Board of Directors

January 25, 2008

First Adopted November 18, 1995, Amended March 8, 1996, October 25, 1997, March 13, 1998,
September 30, 2000, April 20, 2001, October 17, 2003, September 16, 2005, January 25, 2008

TABLE OF CONTENTS

| | Page |
|--|--------|
| BACKGROUND | 3 |
| INVESTMENT POLICY | |
| Introduction..... | 3 |
| Objectives | 4 |
| Spending Policy | 4 |
| Investment Management Expenses | 5 |
| Asset Allocation Guidelines | 5 |
| Asset Allocation Targets | 6 |
| INVESTMENT MANAGEMENT | |
| Foundation Board of Directors | 7 |
| Investment Committee..... | 7 |
| Trust & Investment Office..... | 8 |
| Investment Managers..... | 8 |
| Investment Managers – General Guidelines..... | 9 |
| MONITORING AND EVALUATION | |
| Overall Portfolio | 11 |
| Managers..... | 11 |
| Performance Expectations | 11 |
| ACCOUNTING AND REPORTING | |
| Annual Audit | 12 |
| Investment Pool | 12 |
| Investment Management..... | 13 |
| APPENDIX I: ASSET CLASS DESCRIPTIONS | 15 |

BACKGROUND:

On September 17, 1970, The University of Idaho Foundation, Inc. (Foundation) was incorporated under the laws of the State of Idaho as a non-profit organization exempt from Federal tax under section 501(c)(3) of the Internal Revenue Code. The Foundation is governed by a Board of Directors. The Foundation's sole purpose is to support the University of Idaho (University) by the means at its disposal with an emphasis on soliciting financial support for the University and managing and investing the securities, monies and real and personal property it receives from such sources, and to expend its resources, beyond that required to cover the costs of its operation, to and for the benefit of the University.

The University is governed by the Regents of The University of Idaho (Regents) and is a constitutional corporation organized and existing under and by virtue of the Constitution of the State of Idaho. The University is exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, as an educational organization.

The Consolidated Investment Trust (C.I.T.) was established by the Regents in July 1959, when the assets of 25 individual endowments having a combined market value of \$441,460 were pooled for investment purposes only and in return were issued unit participation shares in an investment account called the C.I.T. The purpose for creating the C.I.T. was to provide a well-managed, diversified investment vehicle owned entirely by endowments.

Effective July 1, 1975, the Regents transferred the assets of the C.I.T. to the Foundation. Upon accepting the C.I.T., the Foundation Board of Directors established an Investment Committee and charged it with the responsibility of monitoring and guiding the C.I.T.'s investment policy.

INVESTMENT POLICY:

Introduction: The Foundation Investment Committee developed this policy through careful study and consideration of the returns and risks associated with alternative investment strategies in relation to the current and projected income needs of University and Foundation activities which are supported by the endowments. The policy provides a structure within which the funds may be managed to achieve the long term investment and financial objectives of all pooled endowment funds. The Foundation is committed to ensuring the assets of the pooled endowment funds are fully diversified and are managed efficiently and prudently by qualified investment personnel.

Because of the perpetual nature of endowments, decisions with regard to investment management and performance of all pooled endowment funds must focus on long-term goals and objectives which safeguard endowment principal and maximize returns which support the education, research, and service missions of the University.

Statement of Investment Policy and Management
University of Idaho Foundation, Inc.
Page 4

It is noted that the Foundation may accept and administer endowments and/or trusts which for various reasons are not invested in the C.I.T. or other pooled endowment funds. In those rare instances, the Investment Committee shall ensure the assets of said endowments/trusts are invested in a prudently and fiscally sound manner and are administered in accordance with the terms and conditions stipulated in the individual endowment/trust agreement which exists for each.

Objectives: The specific objectives of all pooled endowment fund investments are to:

1. provide a regular and reliable source of funding to meet the goals and objectives of the endowments which own pooled endowment fund unit participation shares,
2. target a long-term total rate of return that is, as a minimum, net of fees, at least five percent (5%) greater than the rate of inflation as measured by the Consumer Price Index (CPI),
3. maintain or increase the purchasing power of the corpus after withdrawals are taken, and
4. keep in perspective the long-term (ten year or longer) investment objectives when evaluating interim fluctuations.

Spending Policy: An endowment spending policy determines how the endowment payout amount will be calculated, including how much of the total return will be distributed to support the purposes of the endowment and how much will be reinvested. It is the intent of the Investment Committee to achieve a balance between the endowment growth objectives and stability in the annual investment revenue available for spending in support of the specified purposes of the endowments which own unit participation shares. A spending policy in conjunction with the investment policy is intended to help achieve this balance thereby allowing greater predictability in allocation planning.

C.I.T. Endowment Classes: The spending policy for each endowment is determined by the endowment agreement that exists for each endowment owning C.I.T. unit participation shares. There are two “classes” of endowments:

1. *“Old” or “Traditional” Language:* Most endowments that were created prior to 1996 stipulate that realized income is to be distributed and that all realized capital gains are to be reinvested as principal. Accordingly, the spending policy for these is to annually distribute all of the net realized income from dividends and interest to support activities and programs specified in the endowment agreements. Net realized capital gains, unless stated otherwise in the endowment agreements, are returned to the principal of the endowments and reinvested. The principal of all C.I.T. endowments is inviolate. The C.I.T. distributions are made on a unit participation share pro-rata basis.
2. *“New” or “Flexible” Language:* Most endowment agreements written since 1996 and some of the older endowments include more flexible language that allows for distributable earnings to be calculated in accordance with policy established by the Foundation’s governing board.

Statement of Investment Policy and Management
University of Idaho Foundation, Inc.
Page 5

In September 2000, the Foundation Board of Directors determined that a spending rate for “new” or “flexible” endowments will be established annually by the Foundation Board of Directors based upon the recommendation of the Investment Committee. The target spending rate, net of fees, will be four and a half percent (4.5%) of the three-year rolling average fair market value of the C.I.T.

Assessment for Administration and Investment Management Expenses: Each endowment participating in the C.I.T. will annually be assessed 75 basis points (.75%) of its three-year rolling average fair market value to pay for expenses associated with the administration and investment management of the C.I.T.

Assessment for Foundation Operations: Each “New” or “Flexible” Language Endowment will annually be assessed 50 basis points (.50%) of its three-year rolling average fair market value to be allocated to the Foundation for expenses including but not limited to operating costs and fund raising/development expenses.

Investment Management Expenses: Investment management expenses will be paid from the following sources: 1) the 75 basis points assessment described above; 2) revenues generated by commission recapture, and 3) temporary investment of realized investment earnings.

Asset Allocation Guidelines: The asset allocation process includes: 1) the selection of asset categories, i.e., domestic and international equities, fixed-income funds, real estate, private equity, other alternative investments and cash and/or cash equivalents; and 2) the percentage of the total portfolio for each asset category. Once the asset allocation has been determined by the Investment Committee, the selection of individual investments within each class is the responsibility of the investment managers. The Investment Committee is responsible for determining strategic (long-term) asset allocation, which focuses on the optimal combination of asset classes that is consistent with the Foundation’s risk-return preference and the time horizon.

Asset allocation includes the establishment of risk tolerance and the maximization of the long-run productivity of the pooled endowment fund’s portfolio. This determination, in conjunction with the spending policy, is the basis for balancing the investment policy to assure the growth and financial stability of the endowment in perpetuity.

The asset allocation as shown below will be reviewed at least annually by the Investment Committee, rebalanced, and reported to the Foundation Board.

ASSET ALLOCATION TARGETS

Asset Allocation @ Market

| <u>Asset Category</u> | <u>Minimum</u> | <u>Target</u> | <u>Maximum</u> | <u>Performance Benchmark</u> (net of fees) |
|--|----------------|----------------|----------------|---|
| Equities | 38% | 43% | 48% | |
| <i>Broad US Equity</i> | | 30% | | Russell 3000 Index |
| <i>Non-US Equity</i> | | 13% | | MSCI EAFE Index |
| Fixed Income | 35% | 40% | 45% | Lehman Aggregate |
| Alternative & Real Estate Investments | 14% | 17% (1) | 20% | |
| <i>REIT's</i> | | 6% | | FTSE NAREIT Composite REIT |
| <i>Private Equity/Other</i> | | 11% | | Russell 3000 + 5% |
| Cash and Cash Equivalents | 0% | 0% | 10% | 90-day T-Bill |
| Total | | 100% | | |
| | | | | |
| | | | | |

(1) Achievement of this target is expected to take 3 to 5 years.

INVESTMENT MANAGEMENT:

Foundation Board of Directors: With regard to investment policy, the board is responsible for establishing and delegating the duties of the Investment Committee and for approving investment policies based on recommendations by the Investment Committee.

Investment Committee:

The Investment Committee is responsible for managing the investment process in a fiscally responsible and prudent manner with regard to preserving principal while providing reasonable investment returns. The committee shall establish the policy to include, but not be limited to, selection of acceptable asset classes, allowable ranges of holdings in each asset class and by individual investment managers as a percent of assets, the determination of acceptable securities within each asset class, and investment performance expectations.

The committee will communicate in formal contracts the policy and performance expectations for each investment manager, and will review investment performance regularly to assure policy compliance. Performance will also be regularly evaluated to judge investment managers.

The Investment Committee is a standing committee of the Foundation. It generally meets three or four times a year with the staff from the University Trust and Investment Office (TIO). Membership of the Investment Committee shall be structured to assure investment acumen, continuity and opportunities for service.

The Investment Committee shall consist of a minimum of seven voting members including the Chairman of the Foundation, the Vice Chairman of the Foundation and a University of Idaho College Dean. The Treasurer of the Foundation and the Managing Director of the Foundation shall be included as non-voting members. Additional committee members shall be appointed by the Foundation's Chairman and approved by the Foundation Board of Directors. The chairman of the committee shall be appointed by the Foundation's Chairman and approved by the Foundation Board of Directors.

The primary responsibility of the Investment Committee is to oversee and provide guidance for the investment of Foundation assets. Its major responsibilities are:

1. Recommending investment goals and objectives to the Board of Directors.
2. Formulating investment policy (asset allocation, spending policy, and level of risk).
3. Selecting and hiring investment managers and reviewing their performance.
4. Establishing performance measurement criteria for investment managers and the overall portfolio.
5. Terminating investment managers.
6. Selecting, hiring and terminating investment advisory consultants.

Trust & Investment Office: The Trust & Investment Office (TIO) is responsible for the day-to-day stewardship of all funds and/or finances of the Foundation, including the fiduciary responsibility for all funds so designated to be in trust.

The TIO has the responsibility to comply with: applicable state and federal laws and regulations; Regents' regulations and requirements; University of Idaho policies and procedures; donor requirements; generally accepted accounting and financial management principles; the Foundation's Articles of Incorporation and the Foundation's by-laws.

Specifically with regard to the investment responsibilities, the TIO will oversee the administration and support of those functions essential to sound financial management of all Foundation funds, including pooled endowment funds, such as fiscal planning, budgeting, receipting and disbursing of funds, and investing/managing assets to include custodial and accounting functions.

The Foundation Board of Directors shall authorize specific individual(s) to endorse securities/stock or bond powers for sale, transfer, merger or other lawful purposes and to open or close brokerage accounts and accounts with commercial banks, as necessary to implement investment decisions and transact business in the name of and on behalf of the Foundation.

The TIO will, under the direction of the Investment Committee, provide and/or arrange for the following services: conducting selection processes for investment management; review, assess, and present to the Investment Committee analysis data about investment performance; analyze and present discussion agendas regarding modifications to the investment policy, especially the allocation matrix and spending policy; negotiate the management fee structure; and provide desired accounting and reporting to the Investment Committee and Foundation Board of Directors.

Investment Managers: The pooled endowment funds will be managed by qualified investment management personnel/investment management organizations. The investment managers have discretion, within the guidelines set forth in this investment policy statement and any additional guidelines provided each manager, to manage the assets in each portfolio to best achieve the investment objectives established by the Investment Committee. The investment managers shall be responsible for determining investment strategy and implementing security selection and the timing of purchases and sales within the policy guidelines set forth in this statement and as otherwise provided by the Investment Committee.

Each investment manager will be provided a copy of this statement of investment policy. In turn, as part of the investment management contract that will govern the allocated portfolio, each investment manager is to be provided a written statement of the Foundation's expectations, stated in terms of the objectives and comparative benchmarks that will be used to evaluate performance and the allowable investment vehicles that can be used to achieve these objectives.

Investment Managers - General Guidelines: These guidelines shall apply to all investment managers, unless addressed otherwise in individual management contracts.

Parameters:

1. All managers shall have discretion to invest in cash reserves; however, managers will be evaluated on total funds investment performance.
2. Cash and short-term instruments maturing in less than 360 days shall be restricted to a maximum of 10% of total assets except for brief periods and for temporary defensive purposes.
3. Mutual funds and other pooled asset portfolios are acceptable investment vehicles provided they conform to all other requirements and restrictions.
4. US equity holdings shall be restricted to readily marketable securities of corporations that are actively traded on the major US exchanges including National Market System Stocks. US equity holdings may include American Depositary Receipts traded on US Exchanges. Preferred and convertible preferred stocks may be held. Publicly traded Real Estate Investment Trust (REIT) shares may be held and are considered part of the allocation to stocks. There is no minimum market capitalization for holdings of individual issues. However, each holding shall be of sufficiently low percentage of average daily trading volume to ensure sale on favorable terms at the appropriate time.
5. At least 75% of all non-US equity holdings shall be highly liquid securities issued by corporations headquartered in countries included in the Morgan Stanley Capital International Europe, Australia, Far East Index and Canada. Up to 25% of non-US equity holdings may be issues purchased and sold on exchanges in other countries that offer a ready market for individual issues and have no restrictions on the transfer of funds to and from the US. Managers holding non-US dollar denominated securities are permitted to employ currency hedging strategies.
6. Fixed income investments shall be marketable securities which may include, but not necessarily be limited to US Treasury, federal agencies and US Government guaranteed obligations, sovereign debt, and domestic and foreign corporate issues including convertibles. Mortgage pass-throughs and collateralized debt obligations may be held. Quality preferred stock issued by domestic corporations may also be held. The overall rating of the fixed income assets will be at least "A" as measured by a nationally recognized rating agency. In cases where the yield spread adequately compensates for additional risk, BAA or BBB and below and non-rated securities may be purchased. However, no more than 30% of the holdings shall be in securities whose credit rating is less than BAA- or BBB-.

7. Cash equivalent reserves shall consist of cash instruments having a quality rating by at least one rating agency of A-2, P-2 or higher, maturing in 360 days or less.
8. The following securities and transactions are not authorized: letter stock and other unregistered equity securities; commodities or commodity contracts; short sales or margin transactions.
9. Financial options and futures may be employed in defensive and hedge strategies undertaken to preserve principal.
10. An investment manager shall not use derivatives to increase portfolio risk above the level that could be achieved in the portfolio using only traditional investment securities. Moreover, an investment manager will not use derivatives to acquire exposure to changes in the value of assets or indexes that, by themselves, would not be purchased for the portfolio. Under no circumstances will an investment manager undertake an investment that is non-covered or leveraged to the extent that it would cause portfolio duration to exceed normal duration limits. Investment in "exotic" derivatives with unstable durations is prohibited. These include IO's, PO's, Inverse IO's, and Inverse Floaters. Conventional classes of CMO's are allowed.

Diversification: Investments shall be diversified with the intent to minimize the risk of large realized and unrealized losses to the invested assets. Consequently, the total portfolio will be constructed and maintained to provide prudent diversification with regard to the concentration of holding in individual issues, corporations, or industries.

1. Not more than 5% of the total equity portfolio valued at market may be invested in the common stock of any one corporation.
2. Not more than 5% of the total outstanding shares of any one company may be held.
3. Not more than 20% of the equity portfolio valued at market may be held in any one industry category.
4. Fixed income securities of any one issuer shall not exceed 5% of the market value of the total bond portfolio at the time of the purchase (except US Treasury or other federal agency issues).
5. Holdings of any individual fixed income issue must not exceed 5% of the value of the total issue (except US Treasury or other federal agency issues).

Volatility: Consistent with the desire for adequate diversification, the investment policy is based on the assumption that the volatility of the combined equity portfolios will be similar to that of the market opportunity available to institutional investors with similar return objectives. Fixed income portfolio durations may exceed that of the market even though the volatility of fixed income portfolios, under these conditions, may be greater than the market.

Voting of Proxies: The Investment Managers shall vote shareholder proxy ballots.

Execution of Security Trades: The Investment Committee expects the purchase and sale of securities by investment managers to be made in a manner designed to receive the combination of best price and execution.

MONITORING AND EVALUATION:

Overall Portfolio: This will entail a review of the investment objectives. Investment performance will be reviewed annually to determine the continued feasibility of achieving the investment objectives and the appropriateness of the investment policy for achieving these objectives.

It is not expected that the investment policy will change frequently. In particular, short-term changes in the financial markets should not require any adjustment in the investment policy.

Managers: The TIO will provide monthly investment activity reports to the Investment Committee, including a breakdown by each investment manager. The Investment Committee shall meet on a periodic basis with the Foundation's investment advisory consultant and TIO staff to review total assets and individual manager performance. Performance reviews will focus on:

1. Comparison of managers' results to funds using similar policies (in terms of diversification, volatility, style, etc.).
2. Manager and total assets adherence to the policy guidelines.
3. Material changes in the manager organizations, such as investment philosophy, personnel changes, acquisitions or losses of major accounts, etc.
4. Evaluate performance on a minimum rolling three to five-year investment horizon to judge interim fluctuations with an appropriate perspective.
5. Evaluate performance relative to performance benchmarks that realistically reflect the market of each investment portfolio.

The Investment Managers shall keep the Investment Committee advised of any material changes in personnel, investment strategy, or other pertinent information potentially affecting performance of all managers.

Performance Expectations: The most important performance expectation is the achievement of long-term investment results that are consistent with this Investment Policy Statement. The C.I.T. will be compared to a blended benchmark that represents the target asset classes. The

C.I.T. is expected to meet or exceed the passive policy benchmark over a majority of rolling three- and five-year periods. Implementation of the policy will be directed toward achieving this return and not toward maximizing return without considering the risk.

The Investment Committee recognizes that this real return objective may not be meaningful during some time periods. In order to ensure that investment opportunities available over a specific time period are fairly evaluated, comparative performance statistics will be used to evaluate investment results. The Investment Committee expects each manager to meet or exceed their passive index and the median of their respective performance evaluation universe. This performance should be achieved over a majority of rolling three to five year periods.

ACCOUNTING AND REPORTING

In addition to retaining competent investment managers, essential elements of a successful portfolio include proper accounting, investment activity reporting, performance reporting and internal activity reporting. These functions are provided to the Foundation by financial systems and personnel of the TIO.

Annual Audit:

1. The accounting records for the pooled endowment funds will be maintained in conformity with generally accepted accounting principles and reporting standards, and will be audited annually by the same independent external auditors who audit the Foundation's financial statements.
2. The annual audited financial statements and auditor's letter to management will be presented at the Foundation's annual meeting.
3. The internal controls utilized by the Foundation will be adapted to meet the needs of all pooled endowment funds and will be routinely reviewed by external auditors for appropriateness.

Investment Pool:

1. Endowments which own pooled endowment fund unit participation shares will be separately accounted for -- each will have their own separate fund identification and subaccounts which detail uninvested cash, fund balance invested in a pooled endowment fund, and total fund balance.
2. Endowments which have cash available for investing in a pooled endowment fund will be allowed to purchase unit participation shares at their fair market value on the first day of each month.

Statement of Investment Policy and Management
University of Idaho Foundation, Inc.
Page 13

3. The fair market value of a unit participation share will be determined as of the close of business on the last working day of each month. The share value will be determined by valuing the pooled endowment fund's portfolio at market and dividing that market value by the number of permanent unit participation shares outstanding.
4. The pooled endowment fund's annual spending distributions will be made based on the number of distribution unit participation shares owned by each endowment.
5. The TIO will ensure idle cash is fully invested until needed for distributions at year end, and for transfer to a pooled endowment from individual endowments to purchase unit participation shares.
6. The TIO will receive all broker/custodial confirmations for purchases and sales of securities and ensure that (1) purchases are paid in a timely manner, (2) sales proceeds are received and immediately deposited in a Foundation brokerage/custodial or bank account and invested, (3) the financial records properly reflect all purchases and sales, and (4) sales and purchase commissions are reasonable.

Investment Management:

1. The TIO will monitor investment activity and determine whether or not current established portfolio investment parameters are being followed.
2. The TIO will receive monthly broker/custodial statements and reconcile detail shown thereon to the financial and investment records.
3. The TIO will receipt all interest and dividend checks and ensure they are (1) the proper amount, (2) properly recorded on the financial records, and (3) promptly deposited in a Foundation brokerage or bank account.
4. The TIO will maintain a detailed schedule of investments to ensure that all dividends and interest are, in fact, received when due, and that the exact location of all investments is known at all times.
5. The TIO will ensure accurate and timely investment data is submitted to an independent funds evaluation firm so that firm can prepare investment performance reports.
6. The TIO will ensure that accurate and timely Investment Activity Reports are prepared for use by Investment Managers, Investment Committee and others.
7. The TIO will prepare accurate and timely monthly valuations of the pooled endowment fund portfolios and calculate the value of a unit participation share.
8. The TIO will ensure that endowments which have cash available for the purchase of pooled endowment fund unit participation shares have that cash transferred to the appropriate

Statement of Investment Policy and Management
University of Idaho Foundation, Inc.
Page 14

pooled endowment fund in a timely manner, and that the investment manager is aware of the amount of new money available for investment.

9. The TIO will approve all operating expenses associated with the operation of all pooled endowment funds and initiate action to ensure said expenses are paid in a timely manner and properly recorded on the financial records.

APPENDIX I: ASSET CLASS DESCRIPTIONS

| Asset Class | Definition |
|--|--|
| <u>Equities</u> | |
| U.S. Equities | Stocks issued by companies domiciled or registered in the United States, which trade on domestic stock exchanges. |
| Non-U.S. Developed Market Equity | Stocks issued by companies in developed economies, excluding the U.S. |
| Non-U.S. Emerging Market Equity | Stocks issued by companies domiciled in countries with less developed economies in terms of GDP per capita as defined by the World Bank. |
| <u>Fixed Income</u> | |
| Core U.S. Fixed Income | All fixed rate debt securities issued in the U.S., including government, corporate, agency, mortgage pass-through and asset-backed securities that are rated investment grade (BBB) or higher. |
| Core Plus Fixed Income | A portfolio of debt securities that may include all core fixed income investments, and typically has allocations to non-U.S. bonds (developing and developed countries), non-investment grade bonds (high yield credit), and sectors outside the LB Aggregate Bond Index (i.e., TIPS or Treasury Inflated Protected Securities). |
| High Yield | All corporate debt issued in the U.S. that is rated below investment grade, or is not rated. These securities have a higher yield than investment grade corporates, and are riskier, both in terms of price risk and default risk. |
| Non-U.S. Emerging Market Fixed Income | Emerging market fixed income includes debt securities in countries with less developed economies. |
| Non-U.S. Developed Market Fixed Income | Bonds that are issued by companies or governments in developed countries other than the U.S. |

| | |
|---|--|
| Inflation Linked Bonds (TIPS) | A special type of Treasury note or bond that offers protection from inflation. As with other Treasuries, when you buy an inflation-linked bond you receive interest payments every six months, which is continuously adjusted for inflation. |
| <u>Alternative Asset Classes</u> | |
| Private Equity | Private equity represents a basket of private illiquid investments such as venture capital, leveraged buyouts, mezzanine financing, distressed securities, oil & gas and timber. |
| Real Estate | Real estate includes investment in income producing properties. Real estate investments can vary by property type, geographic location, position in the property cycle, structure of the deal and investment vehicle. |
| REIT's | A publicly traded pool of investments as described for Real Estate above. |
| Non Directional Hedge Fund of Funds | Long-short, arbitrage and other low risk strategies. Leverage used. |

EXHIBIT "E"

Articles of Incorporation

THIRD REVISED AND RESTATED ARTICLES OF INCORPORATION
THE UNIVERSITY OF IDAHO FOUNDATION, INC.

ARTICLE I

Name and Address

The name of this corporation is:

THE UNIVERSITY OF IDAHO FOUNDATION, INC.

The registered agent, location, and post office address of the registered and principal office of the Corporation is:

Executive Director
 University of Idaho Foundation, Inc.
 1106 Blake Street
 PO Box 443150
 Moscow, Idaho 83844-3150

ARTICLE II

Not for Profit

The Corporation is a nonprofit corporation under the Idaho Nonprofit Corporation Act. The Corporation is not formed for pecuniary profit. No part of the income or assets of the Corporation shall inure to the benefit of or be distributable to its members, directors, officers, or other private persons, except to the extent permissible by law and except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article IV hereof.

ARTICLE III

Term

The term of the Corporation is perpetual.

ARTICLE IV

Purposes

The Corporation is organized, and shall be operated exclusively, for the following purposes: to exercise all of the rights and powers conferred by the laws of the state of Idaho upon nonprofit corporations, including without limiting the generality of the foregoing, to acquire by bequest, devise, gift, purchase, lease, charitable trusts, life estates, or any other method of transferring any property of any sort or nature, without limitation as to its amount or value, and to hold, invest, reinvest, manage, use, apply, employ, sell, expend, disburse, lease,

THIRD REVISED AND RESTATED ARTICLES OF INCORPORATION, THE UNIVERSITY OF IDAHO FOUNDATION, INC.
 Revised October 2003

mortgage, convey, option, donate, or otherwise dispose of such property and the income, principal, and proceeds of such property for the benefit of the University of Idaho. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, or corresponding provision of any future federal tax code (hereinafter "Internal Revenue Code"), or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code.

ARTICLE V

Trusts and Trust Funds

Notwithstanding the provisions of Article IV, any donor or testator may direct that his or her gift shall be held in such charitable trusts as may be specifically designated by said donor or testator and in such case his or her intentions shall be carried out by The University of Idaho Foundation, Inc. (hereinafter "Foundation"). Donors or testators may give a principal sum to the Foundation for the benefit of said Foundation, and provide that the income thereof shall be payable to the donor during his or her life, or that it shall be paid to a beneficiary or beneficiaries named by him or by her for life, or for some other period of time, and that after the termination of the estate or estates so provided, the income or principal shall be disbursed as part of the unrestricted income or principal of said Foundation in accordance with Article IV or for such charitable purposes as the donor or testator may specify in accordance with this Article V.

If the members of the Foundation by the vote of ninety percent (90%) of the members shall at any time declare that the purposes of any gift made pursuant to this Article V have become (1) unnecessary, undesirable, impracticable, or impossible of fulfillment, or (2) if any beneficiary to which the income or principal of any gift shall be provided to be paid shall have become nonexistent or shall have ceased its activities, or (3) if for any other reasons the application or applications provided by the said donor or testator shall have become impossible, impracticable, unnecessary, or undesirable, the Foundation shall apply such gift to the purposes set forth in Article IV. The determination of the members that such purposes have become unnecessary, undesirable, impracticable, or impossible of fulfillment shall be binding and conclusive upon all persons.

The Foundation may accept appointments by any court of competent jurisdiction as trustee to hold any fund or funds under the terms of these articles.

ARTICLE VI

Commingleing of Funds

In the absence of any provisions expressing the intention of the donor or testator to the contrary, the Foundation shall be authorized to mingle any property given to it under the terms hereof with other property given to it under the terms hereof without obligation to retain any gift as a separate fund, but any donor or testator may direct that his or her gift be held as a separate fund and may, if he or she so desires, designate such fund as a memorial fund in memory

THIRD REVISED AND RESTATED ARTICLES OF INCORPORATION, THE UNIVERSITY OF IDAHO FOUNDATION, INC.
Revised October 2003

of a particular person or event, and in such case the said fund shall be maintained as a separate fund forming a part of the said Foundation, under such name, if any, as may be properly designated therefor. The Foundation shall in any event be authorized to hold as a separate fund any gift which, in the discretion of the Foundation shall require segregation in order to carry out any specific provision expressed by the donor or testator, or which shall require such segregation or any other reason deemed sufficient by the Foundation.

Subject to any written agreement with the donor or testator to the contrary, if any fund, the income of which is directed by the donor or testator to be paid to any donor or other beneficiary, is commingled, the Foundation shall make available to pay to such donor or other beneficiary as income on such fund the average rate of return on such commingled funds.

If, at any time after such mingling of funds shall have taken place, it should thereafter for any reason be deemed by the foundation as desirable or necessary to separate any fund or funds, each fund so separated shall be considered to be that proportion of the value at the date of separation of the principal or income of the combined funds as the value at the date of gift of such fund so separated shall bear to the total value of such combined funds at said last mentioned date plus any subsequent gifts valued as of the date thereof.

ARTICLE VII

Membership The membership of this Corporation shall consist of one or more classes of members as prescribed in the bylaws. The manner of acting and meeting procedures for the members shall be as prescribed by the bylaws of this Corporation.

ARTICLE VIII

Board of Directors

Management of the affairs of the Corporation shall be by the board of directors who may delegate to officers and to committees of their own number and such additional members from the general membership as the board may deem appropriate such of their powers as they see fit. Directors shall be selected by the members at the times stated in the bylaws, for such terms and in such manner as the bylaws prescribe.

ARTICLE IX

Officers

Officers shall consist of a president, one or more vice presidents, a secretary, and a treasurer. The president and vice presidents shall be selected from members of the board of directors but the secretary and treasurer need not be directors or members. Two (2) or more offices may be held by the same person except that the president may not be secretary or treasurer. Officers shall be selected by the board of directors at the times, for such terms and in such manner as the bylaws prescribe.

ARTICLE XDissolution

In the event of the dissolution of this Corporation, or in the event that it should cease to carry out its purposes, no member, director, officer, or individual shall be entitled to or receive any distribution or division of its remaining assets, property or proceeds, and the balance of all property and assets of the Corporation from any source, after the payment of all debts and obligations of the Corporation, shall be vested in the Board of Regents of the University of Idaho in trust for the use and benefit of the University.

Any such assets not so disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

ARTICLE XITax Exemption

It is the intent of the incorporators that this organization shall be incorporated as a tax-exempt organization to which deductible gifts may be made pursuant to the terms of the Internal Revenue Code. To that end, this Corporation shall be subject to all the restrictions and requirements now or hereafter imposed by the United States Internal Revenue Code, any rules and regulations duly and properly promulgated in the application and interpretation of said Code with which compliance is required for qualification as a tax exempt organization. In particular, in any year in which this Corporation is a "private foundation," as that term is defined in the Internal Revenue Code, its income must be distributed at such time and in such manner as not to subject this Corporation to taxes under Section 4942, Internal Revenue Code, or in the regulations promulgated thereto, and the Corporation shall not engage in any act of self dealing as defined in Section 4941, Internal Revenue Code, or in the regulations promulgated pursuant thereto, and shall not retain any excess business holdings as defined in Section 4042(c), Internal Revenue Code, or under the regulations promulgated pursuant thereto, and shall not make any investments in such manner as to subject the Corporation to taxes under Section 4944, Internal Revenue Code, or in the regulations promulgated pursuant thereto, and shall not make any taxable expenditures as defined in Section 4945(d), Internal Revenue Code, or in the regulations promulgated pursuant thereto.

ARTICLE XIIAmendments

The articles of incorporation of this Corporation may be altered, amended, or newly adopted at any meeting of the members of the Corporation called for the purpose by majority of a quorum of the voting members present, in person or by proxy, provided that notice is sent to each member not less than ten (10) days prior to such meeting, and provided that a quorum is present. A majority of the voting members of the Corporation shall constitute a quorum for such purposes. Such notice shall state in a general way the nature of the proposed change.

ARTICLE XIIINotice

Except as otherwise specified, whenever notice is required, it shall be in writing sent prepaid not less than three (3) days before the event if by electronic transmission and not less than six (6) days if by mail, addressed to the last known address. Notice may be waived either before or after a meeting.

Pursuant to the provisions of the Articles of Incorporation and Bylaws of The University of Idaho Foundation, Inc., an Idaho nonprofit corporation, and pursuant to the Idaho Non-profit Corporation Act, the qualified voting members of the Corporation duly noticed, approved, and adopted the within and foregoing third revised and restated articles of incorporation and all of the amendments therein contained, at a duly constituted meeting held on October 17, 2003.

Executed in triplicate effective October 24, 2003

THE UNIVERSITY OF IDAHO FOUNDATION, INC.

By: Joanne B. Carr
Joanne B. Carr, Secretary

THIRD REVISED AND RESTATED ARTICLES OF INCORPORATION, THE UNIVERSITY OF IDAHO FOUNDATION, INC.
Revised October 2003

EXHIBIT "F"

By-Laws dated January 25, 2007

RESTATED BY-LAWS OF
THE UNIVERSITY OF IDAHO FOUNDATION, INC.

Moscow, Idaho
 January 25, 2007

ARTICLE I
Name and Address

The name of this Corporation is:

THE UNIVERSITY OF IDAHO FOUNDATION, INC. (the "Foundation")

The registered agent, location, and post office address of the registered and principal office of the Foundation is:

Chairman
 University of Idaho Foundation, Inc.
 1106 Blake Street
 PO Box 443150
 Moscow, Idaho 83844-3150

ARTICLE II
Purposes

The mission of The University of Idaho Foundation, Inc., Moscow, Idaho ("Foundation") is to secure, manage, and distribute private support to enhance the growth and development of the University of Idaho.

The Foundation is organized and operated exclusively for educational, charitable, scientific and literary purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law); specifically, the Foundation is organized and operated exclusively to seek, receive, hold, invest, and administer property and to make expenditures to or for the benefit of The University of Idaho ("University"), a State educational institution which is governed by the Regents of the University of Idaho, the governing board legally responsible for the performance and oversight of all aspects of University operations (the "Regents").

In furtherance of such purposes, the Foundation may solicit, receive and accept gifts, devises, bequests and other direct or indirect contributions of money and other property, absolutely or in trust, tangible or intangible, real, personal or mixed, and wherever located, from the general public, including individuals, corporations, and other entities and sources. The Foundation may administer, manage, invest and reinvest such money and property, and apply and expend the

principal, income and proceeds thereof for such purposes, all to or for the benefit of the above-described University.

The Foundation may hold and convey any real estate or other property necessary for, or in furtherance of, its operations or purposes or in relation to the execution or administration of any trust. The Board of Directors of the Foundation shall have full power, at its sole discretion, except as prohibited or limited by the terms of any instrument establishing or governing a gift, devise, bequest or other contribution or transfer, to change the form of any investment and to dispose of any securities or other property held by the Foundation.

ARTICLE III MEMBERSHIP

SECTION 1. Members. The Board of Directors (Voting and Non-Voting) and the Foundation Council (Non-Voting) shall constitute the members of the Foundation.

SECTION 2. Annual Meeting. An annual meeting of the members shall be held in the second quarter of each fiscal year, at a time and place to be fixed by the Chairman, for the purpose of electing directors and for the transaction of such other business as may come before the meeting.

SECTION 3. Notice of Meetings. A written or printed notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose for which the meeting is called, shall be delivered or mailed by the Secretary, or by the officer or person calling the meeting to each member of record entitled to vote at that meeting, at the address which appears on the records of the Foundation, at least ten (10) days before the meeting date. Notice of any meeting of members may be waived in writing filed with the secretary or by attendance in person.

SECTION 4. Quorum. A majority of the persons qualified to vote as members at any meeting shall constitute a quorum.

SECTION 5. Voting by Proxy Prohibited. Except as provided in Section 6 of this Article III, a member must be present in person to vote on any matter coming before a meeting of the members. Voting by proxy is prohibited.

SECTION 6. Participation by Telephone or other Electronic Means. Any or all of the members may participate in a meeting of the membership by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other. Participation by these means constitutes presence in person at the meeting.

ARTICLE IV
DIRECTORS

SECTION I. Voting and Non-Voting Directors. The Board of Directors shall consist of at least fifteen (15) but no more than twenty-five (25) Voting Directors, and a number of Non-Voting Directors, which shall vary from time to time, depending upon the number of individuals who shall meet the criteria of a non-voting member as hereinafter set out.

- (A) Voting Directors. The Board of Directors shall consists of at least fifteen (15) but no more than twenty-five (25) voting directors elected generally, upon recommendation by the Board's Committee on Directors, at the annual meeting of the members by a majority vote of the members present. The term of an elected Voting Director shall begin immediately following his or her election and shall continue for a period of three (3) years (unless elected to fill out the un-expired balance of a newly created term or the term of a Director who resigns, is deceased or is removed from office). Any elected Voting Director shall be eligible to serve two (2) consecutive three (3)-year terms as a Director of the Foundation, provided, however: Should any director be elected to the office of Chairman or Vice-Chairman during their final 3-year term as a Director of the Foundation, then that director's term shall be extended until the termination of their service in that office, with the understanding that the Vice-Chairman's term shall include service as Chairman, should that director be so elected. Any director having served two (2) consecutive terms may be re-elected to the Board of Directors after a minimum of one year from the date of previous service as a Director. Any vacancy on the Board of Directors of an elected Voting Director may be filled at the next regularly scheduled meeting by the remaining Voting Directors choosing a Director to fill the un-expired term.
- (B) Non-Voting Directors. Non-Voting Directors shall consist of a varying number of members who shall be eligible for election by virtue of a certain position of responsibility which each has occupied or presently occupies with the Foundation, as follows:
- (1) Emeritus Directors
Any person who has previously served on the Board of Directors as President or Chairman will automatically be appointed an "Emeritus Director" for life at the conclusion of his or her term of office. Any person who has previously served on the Board of Directors and has exhibited exemplary service to the Foundation shall be eligible to be elected an "Emeritus Director" by the Board at the conclusion of his or her last term of office and shall serve as such Emeritus Director for life. Emeritus Directors shall be invited to attend at least one (1) meeting of the Board during each fiscal year (Annual Meeting).

- (2) **Managing Director**
The Managing Director of the Foundation shall serve as a Non-Voting Director for the same time that he or she is employed by the Foundation and shall attend all Board meetings at which his or her presence is required by the Board.
- (3) **Executive Director**
The Vice President for University Advancement will also serve as Executive Director of the Foundation. This position shall serve as a Non-Voting Director for the same period of time that he or she is employed by the University and shall attend all Board meetings at which his or her presence is required by the Board.
- (4) **Ex Officio Directors**
The following persons shall be designated non-voting ex-officio directors of the Board of Directors so long as they shall hold their position:
- The president of the University;
 - The provost of the University;
 - The president of the University of Idaho Alumni Association, Inc;
 - The president of the Vandal Scholarship Fund;
 - The chair of the Faculty Council of the University;
 - The president of the Associated Students of the University of Idaho
- (5) **Officers of the Foundation**
Any Officer of the Foundation who is not otherwise designated or elected as a Voting Director of the Foundation shall serve as a Non-Voting Director of the Foundation and shall attend all Board meetings at which his or her presence is required by the Board.
- (C) **Classes of Directors.** As nearly as mathematically possible, one-third (1/3) of the positions on the Board of Directors elected shall be open for election each year at the annual meeting.

SECTION 2. Resignation and Removal. Any Director may resign at any time by giving written notice to the Chairman, Secretary, or the Board of Directors of the Foundation. Such resignation shall take effect at the time specified therein. Any Director may be removed from office by a vote of three-fourths (3/4) of all Voting Directors at any annual, regular or special meeting of the Board.

SECTION 3. Meetings. At least four (4) meetings of the Board of Directors shall be held in each fiscal year. An annual meeting of the Board of Directors shall be held in the second quarter of each fiscal year, at a time and place to be fixed by the Chairman. Regular meetings

of the Board of Directors shall be held three (3) additional times during each fiscal year at a time and place to be fixed by the Chairman. Special meetings may be called at any time by the Chairman, or by a majority of the Voting Directors upon request made to the Secretary. A majority of the Voting Directors shall constitute a quorum for election of officers or any other business. Notice of any annual, regular or special meeting of the Board shall be delivered or mailed by the Chairman or Secretary to each Voting Director at least ten (10) days prior to the date of any such meeting unless such notice is waived in writing, filed with the Secretary or by attendance in person by any such Voting Director.

SECTION 4. Participation by Telephone or other Electronic Means. Any or all of the Directors may participate in a meeting of the Board by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other. Participation by these means constitutes presence in person at the meeting.

SECTION 5. Board Action Without a Meeting. Any action which may be taken at a meeting of the Board may be taken without a meeting if, prior to such action, a consent in writing setting forth such action is signed by all of the Directors, and is filed in the minutes of the proceedings of the Board. Action is effective when the last Director signs the consent, unless the consent specifies a different prior or subsequent effective date.

SECTION 6. General Powers of Directors. The Board of Directors shall have all of the general powers provided by the Idaho Nonprofit Corporation Act (the Act), as amended, to the extent not prohibited by these Bylaws.

SECTION 7. Standards of Conduct for Directors. The Board of Directors shall be subject to the Standards of Conduct for Directors as provided by the Act, as amended.

SECTION 8. Directors Conflict of Interest. No contract or other transaction between the Foundation and one or more of its Directors or any other corporation, firm, association or entity in which one or more of its Directors is a director or officer or is financially interested, shall be either void or voidable because of such relationship or interest or because such Director or Directors are present at the meeting of the Board of Directors which authorizes, approves or ratifies such contract or transaction, if:

- (a) The interested Director does not participate in the vote on the contract or transaction;
- (b) The fact of such relationship or interest is disclosed or known to the Board of Directors which authorizes, approves or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the vote or consents of such interested Directors; and
- (c) The contract or transaction is fair and reasonable to the Foundation.

Interested Directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors, which authorizes, approves or ratifies such contract or transaction.

ARTICLE V OFFICERS

SECTION 1. Designated Officers. The officers of the Foundation shall consist of a Chairman, Vice-Chairman, Executive Director, Managing Director, Secretary and Treasurer (which latter two offices may be held by one and the same individual). The Board of Directors may appoint such other Assistant Officers as it may from time to time determine necessary and may define their powers and duties. The Chairman and Vice-Chairman of the Board shall be chosen from among the Voting Directors of the Foundation. The Executive Director, Managing Director, Secretary, Treasurer, and such Assistant Officers as may be appointed by the Board, need not be Voting Directors.

SECTION 2. Election. The Officers of the Foundation shall be elected at the annual meeting of the Board of Directors and shall hold office until the next annual meeting or until the successor for any such officer shall have been elected and qualified. A vacancy in any office may be filled by the Board at any meeting for the balance of the term of such office. A Voting Director who is elected as an officer is eligible to serve in that office for two (2) consecutive one (1)-year terms. A Non-Voting Director who serves as an officer because of his or her position of employment may serve as an officer so long as he or she holds the position.

SECTION 3. Removal. Any officer may be removed from office by a vote of three-fourths (3/4) of all Voting Directors at any annual, regular, or special meeting of the Board.

SECTION 4. Duties of Officers. The duties of the officers of the Foundation shall be as follows:

- (A) Chairman. The Chairman shall be the chief volunteer officer of the Foundation; and, subject to the control of the Board of Directors, shall in general supervise and control all the business and affairs of the Foundation. He or she shall, when present, preside at all meetings of the Board of Directors. He or she may sign, with the Treasurer or other proper officer of the Foundation, so authorized by the Board of Directors, contracts, deeds, mortgages, notes, or other instruments which the Board of Directors has authorized to be executed. He or she will present a slate of Committee chairs and appointees to the Board of Directors for ratification. He or she shall in general perform all duties as may be prescribed from time-to-time by the Board of Directors.
- (B) Vice-Chairman. The Vice-Chairman shall, in the absence of the Chairman or in the event of his or her death, inability or refusal to act, perform the duties of the

Chairman, and, when so acting, shall have all the powers and be subject to all the restrictions upon the Chairman.

- (C) Managing Director. The Managing Director is an employee of the University of Idaho Foundation and shall be the chief operating officer. Subject to the direction of the Chairman and the control of the Board of Directors, the Managing Director shall in general supervise and control the day-to-day operations of the Foundation. The Managing Director shall serve pursuant to the terms of a written employment agreement approved by the Board of Directors. He or she shall in general perform all duties as may be prescribed from time to time by the Board of Directors.
- (D) Executive Director. The Vice President for University Advancement also serves as Executive Director and shall be responsible for serving as a liaison with the Foundation and the University of Idaho as well supporting and directing volunteers in fundraising and advancement efforts.
- (E) Secretary. The Secretary shall attend all meetings of members and of the Board of Directors and shall keep, or cause to be kept, in a book or file provided for the purpose, a true and complete record of the proceedings of such meetings, and he or she shall perform a like duty, when requested, for all standing committees appointed by the Board of Directors. He or she shall attend to the giving and serving of all notices of the Foundation required by these By-Laws, have power to authenticate records, have custody of the books (except books of account), records and corporate seal of the Foundation, and in general shall perform all duties pertaining to the office of Secretary and such other duties as these By-Laws or the Board of Directors may prescribe. The Secretary shall also keep or cause to be kept at the principal office of the Foundation a register of the names and addresses of each Director.
- (E) Treasurer. The Treasurer shall keep, or cause to be kept, correct and complete records of account. He or she shall be responsible for all funds and securities and other valuables which may from time to time come into the possession of the Foundation. The Treasurer shall deposit, or cause to be deposited, all funds of the Foundation with such depositories as the Board of Directors shall designate. He or she shall deposit with a Trustee, hold in a safe deposit box, or handle in any other manner as directed by the Board of Directors, all securities and other valuables of the Foundation. The Treasurer shall furnish to the Board of Directors at each annual meeting, as of the end of each fiscal year, and whenever requested, financial statements in the form and content as prescribed by the Board of Directors. He or she shall in general perform all duties pertaining to the office of Treasurer and such other duties as these By-Laws or the Board of Directors may prescribe.
- (F) Execution of Contracts. All bonds, mortgages, leases, deeds, promissory notes and other written instruments, except checks, leases, and contracts for normal budgeted

operations, shall be authorized by resolution of the Board of Directors and shall be executed in the name of the Foundation and on its behalf by the Managing Director of the Foundation or by such officers or members of the Board as the Board may specifically designate. All checks, drafts and other evidences of indebtedness payable to the Foundation shall be endorsed for collection in the name of the Foundation by the Managing Director, Treasurer or such other persons as the Board may designate.

SECTION 5. Assistant Officers. Such assistant officers as the Board of Directors shall from time to time designate and elect shall have such powers and duties as these By-Laws or the Board of Directors may prescribe.

SECTION 6. Vacancies. Whenever any vacancies shall occur in any office of the Foundation, such vacancy shall be filled by the Directors by the election of a new officer who shall hold office until the next annual meeting or until his or her successor is duly elected and qualified.

ARTICLE VI COMMITTEES

SECTION 1. Executive Committee. The Executive Committee of the Board shall consist of the Chairman, the Vice-Chairman, the Treasurer, the Executive Director/Secretary, the Managing Director, the Chairman of the Operations and Finance Committee, the Chairman of the Committee on Directors, the Chairman of the Investment Committee, and any other committee chairman as determined by the Chairman of the Board. During the intervals between meetings of the Board of Directors, the Executive Committee shall possess and may exercise all powers of the Board of Directors in the management and direction of the affairs of the Foundation in such manner as it shall deem best for the interest of the Foundation in all cases in which specific directions shall not have been given by the Board of Directors. Regular minutes of the proceedings of the Committee shall be kept in a book provided for that purpose. All actions by the Executive Committee shall be reported to the Board at its next meeting succeeding such action, and shall be subject to revision or alteration by the Board provided that no rights of third parties shall be affected by any such revision or alteration. Vacancies in the Executive Committee shall be filled by the Board of Directors by election from the Voting Directors. The presence of a majority shall be necessary to constitute a quorum, and in every case, the affirmative vote of the majority of the members of the Committee present shall be necessary. Such Committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board, and shall also meet at the call of the Chairman or any three (3) members of the Committee.

SECTION 2. Committee on Directors. In addition to other duties assigned to it by the Board of Directors, the Committee on Directors shall (i) screen, recruit, and recommend

potential Board and Foundation Council members; based upon the diversity of: skills needed, ethnicity, gender, and geography, (ii) recommend to the Board of Directors a slate of officers for election, (iii) evaluate the performance of Directors and officers, both individually and collectively; and (iv) be responsible for orientation and deployment of new Board members. This committee shall also propose nominees to the Foundation Council, a supporting organization of the Foundation.

SECTION 3. Operations and Finance Committee. In addition to other duties assigned to it by the Board of Directors, the Operations and Finance Committee shall advise the Board of Directors on (i) general fiscal policy, fiscal management and all operational matters including budgetary and financial issues, (ii) personnel issues including determination of the Foundation's salary pool and its salary structure, and (iii) evaluating the Managing Director.

SECTION 4. Investment Committee. In addition to other duties assigned to it by the Board of Directors, the Investment Committee shall be responsible for (i) deciding how investments will be managed, (ii) making asset allocation decisions, (iii) making direct investments, (iv) selecting the investment managers, (v) reviewing the investment portfolio performance, and (vi) providing periodic reports to the Board on investment operations and results.

SECTION 5. Audit Committee. In addition to other duties assigned to it by the Board of Directors, the Audit Committee shall oversee the Foundation's audit process, including (i) communicating with the auditors and the Foundation's staff, (ii) review of the audit and management letter process, and (iii) recommending to the Board of Directors potential audit firms.

SECTION 6. Development Committee. In addition to other duties assigned to it by the Board of Directors, the Development Committee shall (i) promote, support and enhance the development program on behalf of the University of Idaho and its donors, (ii) review and recommend development program policies and procedures, and amendments thereto, including gift acceptance and donor recognition and stewardship policies, (iii) assist when appropriate with the cultivation, education and solicitation of gift donor prospects.

SECTION 7. Other Committees. The Board of Directors, upon the recommendation of the Chairman or otherwise, may appoint such other committees as may be desirable for carrying out the purposes of the Foundation. Such committees shall have and may exercise such powers as shall be conferred or authorized by the resolution of appointment by the Board. Both Voting and Non-Voting Board members, and where appropriate, non-board members may be appointed by the Chairman of the Board to any such committees.

SECTION 8. Ex Officio Committee Members. The Chairman and Vice Chairman of the Board shall serve as *ex officio* voting members of the Committee on Directors, Operations and Finance Committee, Investment Committee, and any other committees established by the Board of Directors with the exception of the Audit Committee. The Managing Director and

the Treasurer shall serve as *ex officio* non-voting members of the Executive Committee, Operations and Finance Committee, and Investment Committee. The Managing Director shall also serve as an *ex officio* non-voting member of the Committee on Directors. Additional *ex-officio* non-voting directors (as outlined in Article III, Section II (B)(3)) may serve on such committees as designated by the Board of Directors so long as said directors shall hold their respective designated position.

SECTION 9. Selection of Committee Chairmen and Committee Members. The Chairman of the Board of Directors shall recommend to the Board of Directors for its approval a Chairman for each of the Foundation's committees and a list of members for each committee. Vacancies in the membership of a committee other than the Executive Committee may be filled by the Chairman of the Board of Directors with the consent of the Board at Directors. Prior to the making of any such recommendations, the Chairman shall endeavor to determine the preferences of Directors regarding committee assignments and shall assign each Director to at least one (1) standing committee. Chairmen of committees shall be members of the Board of Directors. Members of committees must be in good standing with the University of Idaho Foundation, Inc. Board of Directors and the Foundation Council.

SECTION 10. Terms and Term Limitations. Committee chairman and committee members are elected to serve for one (1) year or until his or her successor is elected and qualified. A committee member may serve on a particular committee for any number of consecutive terms.

SECTION 11. Committee Meetings. Meetings of any committee may be called by the Chairman of such committee or by the Chairman of the Board, by giving or causing to be given notice of such meeting, setting forth its time and place and delivered personally or by mail or telephone to the residence or place of business of the committee member as listed in the records of the Foundation, at least two (2) calendar days prior to such meeting. A majority of the voting members of any committee shall constitute a quorum for the transaction of business. Each committee shall keep minutes of its meetings and report to the Board and/or Chairman as necessary with recommendations.

SECTION 12. Participation by Telephone or other Electronic Means. Any or all of the voting members of any committee may participate in a meeting of the committee by means of a conference telephone or similar communications equipment by which all persons participating in the meeting can communicate with each other, and participation in this manner constitutes presence in person at the meeting.

SECTION 13. Committee Action Without a Meeting. Any action which may be taken at a meeting of a committee may be taken without a meeting if, prior to such action, a consent in writing setting forth such action is signed by all of the voting members of the committee and is filed in the minutes of the proceedings of the committee.

ARTICLE VII FISCAL YEAR

The fiscal year of the Foundation shall begin on the first day of July of each year and end on the thirtieth day of June of the next succeeding year.

ARTICLE VIII DISSOLUTION

In the event of the dissolution of this Foundation, or in the event that it should cease to carry out its purposes, no member, director, officer, or individual shall be entitled to or receive any distribution or division of its remaining assets, property or proceeds, and the balance of all property and assets of the Foundation for any source, after the payment of all debts and obligations of the Foundation, shall be vested in the Board of Regents of the University of Idaho in trust for the use and benefit of the University.

Any such assets not so disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose.

ARTICLE IX BOOKS AND RECORDS

The Foundation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, Board of Directors, and committees having any of the authority of the Board of Directors, and shall keep at the principal office a record giving the names and addresses of the members entitled to vote. All books and records of the Foundation may be inspected by any member, or his or her agent or attorney for any proper purpose at any reasonable time.

ARTICLE X INDEMNIFICATION AND INSURANCE

SECTION 1. Indemnification. The Foundation shall indemnify each member of the Board of Directors and each Officer of the Foundation now or hereafter serving as such, who was or is a party, or is threatened to be made a party, to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative, or investigative by reason of the fact that he or

she is or was a Director or Officer or is or was serving at the request of the Foundation as a Director, Officer or member of another corporation, partnership, joint venture, trust or other enterprise, against expenses, (including attorney's fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such claim, action, suit or proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Foundation, and with respect to any criminal action or proceeding when he or she had no reasonable cause to believe the act was unlawful. The termination of any claim, action, suit or proceeding, civil or criminal, by judgment, settlement (with or without court approval), or conviction or upon a plea of guilty or of nolo contendere, or its equivalent, shall not create a presumption that a Director or Officer did not meet the standards of conduct set forth in the preceding sentence.

SECTION 2. When Made.

- (a) To the extent that a Director or Officer has been successful on the merits or otherwise in defense of any claim, action, suit or proceeding referred to in Section (1) of this Article, or in defense of any claim, issue or matter therein, he or she shall be indemnified against the expenses (including attorney's fees) actually and reasonably incurred by him or her in connection therewith.
- (b) To the extent that a Director or Officer has not been successful on the merits in defense of any action, suit or proceeding referred to in Section 1 of this Article, or the defense of any claim, issue or matter therein, indemnification (unless ordered by the court) shall be made at the discretion of the Foundation and only upon a determination that indemnification of the Director or Officer is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said Section (1). Such determination shall be made: (1) by the Board of Directors by a majority vote of a quorum consisting of Directors who were not parties to such action, suit or proceeding; or (2) if such a quorum is not obtainable, or even if obtainable, a quorum of disinterested Directors so directs, by independent legal counsel (who may be regular counsel of the Foundation) in a written opinion.

SECTION 3. Expenses. As authorized by the Board of Directors, expenses incurred by any person who may have a right of indemnification under this Article in defending a civil or criminal claim, action, suit or proceeding may be paid by the Foundation in advance of the final disposition of such claim, action, suit or proceeding, or where appropriate the Foundation may, itself, undertake the defense of such claim, action, suit or proceeding, upon receipt of an undertaking by or on behalf of such person to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Foundation pursuant to this Article.

SECTION 4. Non-exclusive. The indemnification provided by this Article for Directors and Officers shall not be deemed exclusive of any other rights to which any of them may be entitled, under any bylaw, agreement, vote of the disinterested Directors, as a matter of law or otherwise, both

as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director or Officer and shall inure to the benefit of the heirs, executors and administrators of any such person.

SECTION 5. Agents and Employees. In addition to the indemnification which shall be provided by the Foundation to its Directors and Officers as hereinbefore provided in this Article, the Foundation may, if authorized by action of the Board of Directors, indemnify any agent or employee of the Foundation, to the same extent and under the same circumstances as such indemnification is assured to the Directors and Officers of the Foundation under this Article

SECTION 6. Insurance. The Foundation may purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a Director, Officer, member, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against the person and incurred by the person in any such capacity, or arising out of the person's status as such, whether or not the Foundation would have the power to indemnify the person against such liability under the provisions of this Article or otherwise under the laws of the State of Idaho.

ARTICLE XI AMENDMENT

These By-Laws, or any Article thereof, may be amended in whole or in part by a majority vote of the Board of Directors at any annual, regular or special meeting of the Board of Directors.

ARTICLE XII COMPENSATION

Directors shall receive no compensation for their services as directors. The board of directors may, however, reimburse a director out of Foundation funds for professional or other services actually performed. Officers may be paid such reasonable compensation as the board of directors may prescribe, and, in the case of officers who are employees of the University, in accordance with the policies of the Regents of the University of Idaho. (See Idaho State Board of Education Governing Policies and Procedures V.E2.i.)

ARTICLE XIII FUNDS AND SECURITIES

SECTION 1. The board of directors may authorize any officer or officers or officer together with any member, in the name of and on behalf of the Foundation to enter into any contract or execute and deliver any instrument, or to sign checks, drafts, or other orders for the payment of money or notes or other evidences of indebtedness, and such authority may be general or

confined to specific instances; and, unless so authorized by the board of directors, no officer shall have power or authority to bind the Foundation by any contract or engagement or to render it pecuniarily liable for any purpose or to any amount.

SECTION 2. No loan shall be contracted on behalf of the Foundation and no negotiable paper shall be issued in its name unless authorized by the board of directors. When authorized by the board of directors so to do, any officer of the Foundation may effect loans and advances at any time for the Foundation from any bank, trust company, or other institution, or from any firm, corporation, or individual. Such authority may be general or confined to specific instances.

SECTION 3. All funds of the Foundation not otherwise employed shall be deposited from time to time to the credit of the Foundation in such banks, trust companies, investment funds, or accounts, or other depositories as the board of directors may select, or as may be selected by any officer or officers of the Foundation to whom such power may from time to time be delegated by the board of directors.

ARTICLE XIV SEAL

The seal of the Foundation shall be circular in form and shall bear the name of the Foundation, the year of its organization, and the words "corporate seal, State of Idaho".

CERTIFICATE

Know all men by these presents:

That we, the undersigned Chairman and Secretary of THE UNIVERSITY OF IDAHO FOUNDATION, INC., an Idaho corporation, do hereby certify that the foregoing By-laws, supersede all prior By-laws, amended or restated, were duly adopted as the restated By-laws of said corporation at a duly constituted meeting of the members of the corporation at which a quorum was present, in person or by proxy, said meeting held on the 25th day of January, 2007 and that the same do now constitute the By-laws of said corporation.

Dated this _____ day of _____, 2007.

William G. Gilbert, Jr.
Chairman

Christopher P. Murray
Secretary

EXHIBIT "G"

Conflicts of Interest Policy

University of Idaho Foundation, Inc.

Conflicts of Interest Policy

- A. **Purpose.** The purpose of this Conflicts of Interest Policy is to protect the Foundation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer, director or committee member of the Foundation. Such transactions may include services provided by the Foundation, purchase of services and/or tangibles from a vendor; and/or access to specialized or privileged information which can be used for personal gain. This policy is intended to supplement but not replace any Idaho laws governing conflicts of interest applicable to nonprofit and charitable corporations.
- B. **Applicability.** This Policy applies to any transaction or arrangement between the Foundation and any "interested person".

An "interested person" is a director, officer or member of a committee with board-delegated powers who has a direct or indirect "financial interest".

A "financial interest" is:

1. An ownership or investment interest in any entity with which the Foundation has a transaction or arrangement;
2. A compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement; or
3. Being an officer, director, employee or agent of any entity or individual with which the Foundation has a transaction or arrangement.

Compensation includes direct and indirect remuneration and gifts or favors which are substantial in nature.

- C. **Determination of a Conflict of Interest.** With respect to any proposed transaction or arrangement between the Foundation and any entity or individual being considered by the board of directors or any committee with board-delegated powers:
1. Any interested person shall disclose any financial interest and all material facts related thereto to the board or committee as soon as the interested person becomes aware of a possible conflict of interest.
 2. Upon the disclosure by an interested person of a financial interest and all material facts relating thereto and discussion with the interested person, he or she shall leave the meeting while the remaining members of the board or committee discuss the matter and determine, by majority vote without the interested person voting,

whether or not the financial interest of the interested person constitutes a conflict of interest.

D. Addressing a Conflict of Interest. If a conflict of interest is determined to exist, then the board or committee shall:

1. Require the interested person to leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest; provided, however, that the interested person may make a presentation at the meeting prior to leaving;
2. Appoint, if it deems appropriate, a non-interested person or committee to investigate alternatives to the proposed transaction or arrangement; and
3. Determine, by a majority vote without the interested person voting, that the transaction or arrangement is in the Foundation's best interests and for its own benefit; is fair and reasonable to the Foundation, and, after exercising due diligence, determine that the Foundation cannot obtain a more advantageous transaction or arrangement with reasonable efforts under the circumstances.

Any interested person who violates this Conflict of Interest Policy shall be subject to appropriate discipline, including removal from office.

E. Recording Conflicts of Interest. The minutes of all board meetings and the meetings of all committees with board-delegated powers shall include:

1. The names of the persons who disclose financial interests, the nature of the financial interests and whether the board or committee determined that there was a conflict of interest; and
2. The names of the persons who were present for discussions and votes relating to the transaction or arrangement; the content of these discussions, including any alternatives to the proposed transaction or arrangement; and a record of the vote.

F. Distribution of Conflict of Interest Policy.

1. At the first board meeting following the annual board meeting, and at the first meeting of each committee with board-delegated powers following the annual board meeting, a copy of the Foundation's current Conflicts of Interest Policy shall be distributed to all directors and committee members.
2. On or before the date of the second board or committee meeting following the annual board meeting, each director and committee member shall sign and return to the secretary of the board a written statement that he or she:
 - a. Has received a copy of the Conflicts of Interest Policy;
 - b. Has read and understands the Policy;

- c. Agrees to comply with the Policy;
- d. Understands that the Policy applies to all committees and subcommittees having board-delegated powers; and
- e. Understands that the Foundation is a charitable organization and that in order to maintain its tax-exempt status, it must continuously engage primarily in activities which accomplish one or more of its tax-exempt purposes.

G. Periodic Reviews. At the first board meeting following the annual board meeting, and at the first meeting of each committee with board-delegated powers following the annual board meeting, and at such other times as the board or committee may deem appropriate, the board or committee shall conduct a review of the Foundation's activities to ensure that the Foundation is operating in a manner consistent with accomplishing its charitable purposes and that its operations do not result in private inurement or impermissible benefit to private interests.

Adopted by the Board of Directors of the University of Idaho Foundation, Inc. on _____, 2006.

Name, Secretary

University of Idaho Foundation, Inc.

Conflicts of Interest Statement

The undersigned hereby states that he or she is an officer, director or committee member of the University of Idaho Foundation, Inc. ("Foundation") and that he or she:

- a. has received a copy of the Foundation's Conflicts of Interest Policy;
- b. has read and understands the Policy;
- c. agrees to comply with the Policy;
- d. understands that the Policy applies to all committees and subcommittees having board-delegated powers;
- e. understands that the Foundation is a charitable organization and that in order to maintain its tax-exempt status, it must continuously engage primarily in activities which accomplish one or more of its tax-exempt purposes; and
- f. recognizes the need to maintain confidentiality regarding information he or she might receive as an officer, director or committee member regarding the activities of the Foundation.

The undersigned hereby states that, to the best of his or her knowledge and belief, he or she is not in a position of possible conflict of interest with the Foundation except as stated below:

Name of Organization

Position Held

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Dated: _____, 2007

Signature

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